



# भारत का राजपत्र The Gazette of India

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NEW DELHI, SATURDAY, AUGUST 13, 1994/SRAVANA 22, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ  
Orders and Notifications issued by Central Authorities (other than the Administrations of Union  
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 20 जुलाई, 1994

आ.प्र. 60:—भारत निर्वाचन आयोग, 10-ठाणे  
संसदीय निर्वाचन क्षेत्र से लोक सभा के प्रो. रामचन्द्र गणेश  
कापसे के निर्वाचन को प्रश्नगत करने वाली 1991 की  
निर्वाचन अर्जी सं. 6 में मुम्बई उच्च न्यायालय, के तारीख  
12, 13 और 15 अप्रैल 1994 वाले निर्णय/आदेश को  
लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के  
अनुसरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/महा.-लो.स./8/91/(मुम्बई)]

आदेश से,

गनश्याम खोहर, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 20th July, 1994

O.N. 60.—In pursuance of section 106 of the  
Representation of the People Act, 1951 (43 of 1951),  
the Election Commission of India hereby publishes  
the Order/Judgment dated 12th, 13 and 15th April,

1775 G/94

1994 of the High Court of Judicature at Bombay, in  
Election Petition No. 6 of 1991, calling in question  
the election of Prof. Rama Chandra Ganesh Kapse  
to the House of the People from 10-Thane Parlia-  
mentary Constituency.

[No. 82/MT-HP/6/91(Bombay)]

By order,

GHANSHYAM KHOHAR, Secy.

IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY  
O.O.C.J.

ELECTION PETITION NO. 6 OF 1991

Haribansh Ramakbal Singh,  
Indian Inhabitant,  
aged about 41 years,  
residing at Bunglow Plot No. 198,  
Sai Kutir,  
E-Lane, Sector 8, Vashi,  
New Bombay-400073.

..Petitioner

V/s.

Prof. Ramchandra Ganesh Kapse.  
residing at  
Nishi Gandhi Apartment,  
Ahilyabai Chowk,  
Kalyan (West),  
Distt. Thane.

..Respondent

(217)

Mr. M. P. Vashi with Mr. M. M. Vashi, Mr. S. P. Rupwate, Mr. Vijay Singh and Ms. Nilanjana Shah for the petitioner.

Mr. Arun Sathe with Mr. Y. K. Sharma in M/s. Sanjeev Kanchan and Co. for the Respondent.

Mr. Ram Jethmalani with Mr. Nitin Pradhan and Ms. S. D. Khot for Respondent/on notice.

Mr. Nitin Pradhan with Mr. Sanjeev Kadam for Respondent/on notice.

CORAM : ASHOK AGARWAL, J.

Date : 12th April, 1994

13th April, 1994

&

15th April, 1994

### ORAL JUDGMENT

This petition pertains to the elections to the 10th Thane Parliamentary Constituency.

2. The petitioner, who was sponsored by the Indian National Congress, was amongst the several candidates, who had contested the elections. Similarly, the Respondent, who was sponsored by the Bharatiya Janata Party-Shivsena Combine, also contested. The Respondent secured 3,02,928 votes and was declared elected. The petitioner secured 2,74,611 votes and was defeated. The election of the respondent is impugned in the present petition.

3. The aforesaid election was held in accordance with the election programme issued by the Election Commission on 19th April, 1991. Under the programme, the elections were declared to be held on 26th May, 1991. However, on account of the sad demise occasioned by the assassination of the then Prime Minister Shri Rajiv Gandhi, the elections were postponed and were ultimately held on 15th June, 1991. The results of the elections were declared on 17th June, 1991. As already stated the respondent was declared elected and petitioner was declared unsuccessful. The present petition is filed on 1st August, 1991. To put it in a nut shell, it is the case of the petitioner that the respondent, who follows Hindu religion, his leaders, other workers and supporters, with his consent and knowledge, appealed to the voters in diverse methods by asking for votes in the name of Hindu Religion. The respondent practised undue influence and interfered with the free exercise of the electoral rights. He also promoted feelings of enmity or hatred between different classes of citizen of India on the ground of religion for the furtherance of his prospects at the election and for prejudicially affecting the election of the petitioner. According to the petitioner, the respondent is, therefore, guilty under the provisions of section 123(2), 123(3), 123(3A) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") and hence his election is liable to be set aside and fresh elections should be ordered to be held.

4. After the election petition was filed on 1st August, 1991, the respondent on 25th November, 1991 took out Chamber Summons being Chamber Summons No. 1126 of 1991 for dismissal of the petition for

non compliance of the provisions of Sections 81, 82, 83 and 86 of the Act. In the alternative, a prayer was made for striking off various averments contained in the petition on the ground that they were vexatious and irrelevant. By an order passed on 2nd/3rd March, 1992, the Chamber Summons was dismissed. In the meanwhile the respondent on 24th January, 1992 filed his written statement. On 28th April, 1992 issues were settled and the petition was adjourned to 22nd June, 1992 for recording evidence. In the meanwhile the respondent carried the order, passed on the Chamber Summons, to the Supreme Court and the S.L.P. came to be dismissed sometime in May, 1992. On 22nd June, 1992 an application was made on behalf of the respondent for adjournment on the ground that the respondent had gone to Australia on Parliamentary delegation. The matter was accordingly adjourned to 20th July, 1992. On 20th July, 1992 the matter was adjourned to 3rd August, 1992 as a relation of one of the Advocates, appearing in this matter, had died. The recording of the evidence commenced on 3rd August, 1992. On 3rd and 4th August, 1992 the evidence of the petitioner and four other witnesses was recorded. On 5th August, 1992 an application was made on behalf of the Respondent for transfer of the petition on the ground that the respondent apprehended that justice will not be meted out to him at my hands. The application for transfer filed was rejected by a speaking order. The respondent on 7th August, 1992 moved the learned Chief Justice for transfer of the petition from my Court. By an order passed on 10th August, 1992 the application was rejected by the learned Chief Justice. The respondent carried the matter to the Supreme Court by filing SLP No. 10022 of 1992 seeking to impugn my order dated 5th August, 1992 whereby the transfer application was rejected. The Supreme Court granted stay of further proceedings till 19th August, 1992. By an order passed on 12th August, 1992 the Supreme Court summarily rejected the aforesaid SLP. In the meanwhile the recording of evidence continued and on 6th August, 1992, the petitioner closed his evidence and the recording of the evidence of the respondent commenced. On that day, the respondent filed a list of witnesses which includes the names of Police Officers to show that he was at Dahanu on 21st May, 1991 and hence was not present at the meeting at which Sadhvi Reethambhara was the main speaker. On the very day i.e. on 6th August, 1992 an application was made on behalf of the respondent for adjournment on the ground that on 7th August, 1992 he was required to ask a star question in the Parliament. The application for adjournment was rejected. On 7th August, 1992 the respondent sought to depose that on the date of the meeting of Sadhvi Reethambhara i.e. on 21st May, 1991 he was not present at Shivaji Maidan, Thane, but was at Dahanu campaigning for another B.J.P. candidate. The evidence in that behalf was objected by the petitioner on the ground that the respondent, in paragraph 26 of his written statement, had not denied his presence at the meeting held on 21st May, 1991 in Thane. The respondent had not averred that he was not in Thane. He had not averred that he had gone to Dahanu constituency on 20th and 21st May, 1991. The said case was not put to any of the witnesses examined on behalf of the petitioner. The petitioner is, therefore, taken by surprise and is handicapped in challenging the evidence sought to be led in respect of the respondent's presence at

Dahanu constituency, and his having attended the election meeting there. By an order passed by me, appearing in para 8 on page 78 of the notes of evidence, the objection was upheld. On August, 1992, the respondent took out a Chamber Summons to amend paragraph 26 of the written statement. By the amendment the respondent sought to contend that he was not present at Thane on 21st May, 1991 but had gone to Dahanu for campaigning in favour of a B.J.P. candidate. By a speaking order passed on the very day the Chamber Summons was dismissed. On the very day i.e. on 10th August, 1992 an application was made on behalf of the respondent for adjournment on the ground that the respondent was hospitalised. The matter was adjourned to 11th August, 1992. On 11th August, 1992 a medical certificate about the illness of the respondent was produced and the matter was further adjourned to 18th August, 1992. The respondent challenged the orders passed on 7th August, 1992 and 10th August, 1992 refusing to permit the respondent to lead evidence in respect of his presence at Dahanu on 21st May, 1991 and refusing his prayer for amendment of the written statement in order to raise the aforesaid plea, by filing SLP No. 10521 of 1992 and 10819-9 of 1992. By an order passed on 27th August, 1992 both the SLPs were dismissed. On 1st September, 1992 the recording of evidence progressed and the cross-examination of the respondent commenced. On 7th September, 1992 an application was made by the petitioner for permission to examine police witnesses who had attended the meeting of Shri L. K. Advani on 1st June, 1991. The said officers had failed to remain present in response to Court summonses and hence their evidence had remained to be recorded. Since the said witnesses were then present, permission to record their evidence was granted after overruling the objections raised on behalf of the respondent. The evidence of P.W. 9, P.W. 10, P.W. 11 and P.W. 12 was accordingly recorded. After the parties had closed their case the learned Counsel appearing for the contending parties were heard on merits in support of their respective claims and by an order passed on 24th September, 1992 I issued notices under section 99 of the Act to Sadhvi Reethambara and Shri Pramod Mahajan. By the very same order, the prayer, on behalf of the petitioner, to issue a similar notice to Shri L. K. Advani was rejected. Accordingly notices bearing No. 922 of 1992 were issued both to Sadhvi Reethambara and Shri Pramod Mahajan. The notices were made returnable on 30th November, 1992. On 25th November, 1992, the returnable date was extended to 25th January, 1993 as Sadhvi Reethambara was not served. On 31st December, 1992 fresh show cause notice was issued to Sadhvi Reethambara returnable on 25th January, 1993. In March, 1993 both Sadhvi Reethambara and Shri Pramod Mahajan filed their respective written statements. As far as the written statement of Sadhvi Reethambara is concerned, the same was initially signed only by her Advocate on record. During the course of further hearing, the said written statement came to be solemnly affirmed by one Harishchandra Patil, a B.J.P. worker, in his capacity as power of attorney holder of Sadhvi Reethambara. The written statement has been drafted in the form of an affidavit. It recites the facts which have been narrated by Sadhvi Reethambara in her personal capacity. For instance she states "I say and submit at the outset that a speech was delivered by me at Thane on May 21, 1991. The

affirmation clause merely recites" solemnly affirmed at Bombay dated 22nd November, 1993" The same was thereafter signed by the deponent Shri Harishchandra Patil. The entire written statement, in the words of Sadhvi Reethambara, is sought to be solemnly affirmed by the aforesaid clause. Which part of the written statement is true to his knowledge and which part is true to his information and belief has not at all been stated. To a question posed to the Counsel appearing on behalf of Sadhvi Reethambara as to the source of knowledge on the basis of which the written statement has been sworn by the Power of Attorney Holder the Counsel, on taking instructions, stated that the Constituted Attorney, who is a B.J.P. worker was present with Sadhvi Reethambara all along and was, therefore, conversant with the facts stated in the written statement. Being dissatisfied with the state of affairs, I was initially not inclined to take the written statement into account. However, on a concession being made by Shri Vashi, I have taken the written statement on record and have considered the same as having been duly filed by Sadhvi Reethambara.

5. On 6th April, 1993 cross-examination on behalf of Sadhvi Reethambara and Shri Pramod Mahajan commenced. On 8th April, 1993, an application was made on behalf of Sadhvi Reethambara to examine the very same Police Officers who were sought to be examined by the respondent to prove his presence at Dahanu on 21st May, 1991. The prayer was rejected by a speaking order. My order dated 8th April, 1993 rejecting the prayer of Sadhvi Reethambara to examine the Police Officers to prove the presence of the respondent at Dahanu on 21st May, 1991 was carried to the Supreme Court by filing SLP No. 6968 of 1993. By an order passed on 12th May, 1993 the said SLP was dismissed.

6. Both Sadhvi Reethambara and Shri Pramod Mahajan carried my order dated 24th September, 1992 issuing notice under section 99 of the Act to the Supreme Court. SLP No. 6067 of 1993 was filed by Sadhvi Reethambara and SLP No. 7100 of 1993 was filed by Shri Pramod Mahajan. On 29th April, 1993, the Supreme Court issued notice returnable in the first week of August, 1993 and granted interim stay of further proceedings. On 23rd August, 1993 both SLP No. 6067 of 1993 and SLP No. 7100 of 1993 were dismissed as withdrawn with liberty to raise all contentions before the High Court. During August, 1993 to 25th March 1994, the petition could not be taken up for further hearing as I was assigned Division Bench work. On 28th March, 1994 after I was assigned Single Judge's work, the petition was taken up for final arguments. After the Counsel appearing on behalf of the petitioner, respondent, as also the notices Sadhvi Reethambara and Shri Pramod Mahajan were heard at considerable length, I have started dictating the present judgment and order.

7. The petitioner in paragraph 6 of the petition has narrated the back ground which according to him has preceded the election in question. He has stated that since last 4 to 5 years serious national problems have cropped up in states like Jammu and Kashmir,

Punjab, Assam, etc. Instead of helping the Union Government in tackling the respective problems of these States, parties like BJP, Shiv Sena, etc. have tried to exploit the said problems to have political mileage and election gains. In fact, certain organisations like the Rashtriya Swayamsevak Sangh (RSS) and Vishwa Hindu Parishad (VHP) which were totally dormant all these years have suddenly become very active politically and otherwise, purportedly championing the cause of Hindus.

8. The Petitioner has further gone on to state that for the last 2/3 years another unfortunate controversy has arisen regarding a place of worship at Ayodhya, which is now commonly known as Ram Janmabhoomi-Babri Masjid issue. According to the petitioner, the dispute pertaining to the place of worship is pending in the Court of law. Pending the said Court proceedings certain political parties and other organisations have tried to take up the issue, particularly, in view of the then ensuing 9th Lok Sabha elections. The political parties like BJP and Shiv-sena and other organisations like VHP have exploited the said unfortunate dispute for their political gain.

9. The petitioner has further stated that BJP has suddenly decided that it is the only party which can fight for the rights of the Hindus. While the said party has tried to exploit the said plank at the national level, another political party viz. Shiv Sena has tried to exploit the plank of protecting Hindu religion over a period of last 2 to 3 years in the State of Maharashtra. In fact the said Shiv Sena party had campaigned in a by-election for the Maharashtra Legislative Vile Parle Constituency, Greater Bombay, which was held on the 13th December, 1987. In the said election one Dr. Ramesh Y. Prabhoo was sponsored and put up as its candidate by the said Shiv-sena party. The said Dr. Ramesh Y. Prabhoo as well as the Supreme leader of Shiv Sena Party, Shri Bal Thackeray and other Shiv Sena leaders had campaigned in the said election by appealing to the voters in the name of Hindu religion. At various public meetings interviews and press conferences the said Dr. Ramesh Prabhoo, Bal Thackeray and other leaders of the Shiv Sena party had made appeals to the voters to vote for the said Dr. Ramesh Prabhoo which created and/or attempted to create enmity amongst the electors on the ground of caste, creed and religion. The said Dr. Prabhoo was elected in the said election because of corrupt practices committed during election campaign.

10. One Shri Prabhakar Kunte, who had contested the said Assembly election as an official candidate of Congress (I) had challenged the election of Dr. Ramesh Prabhoo by filing an election petition, being Election Petition No. 1 of 1988. The election of Dr. Ramesh Prabhoo after full trial was set aside by Judgment and Order dated 7-4-1989. In the said proceedings, a notice was also issued to Shri Bal Thackeray, the Supreme Leader of Shiv Sena, under Section 99 of the Act. By the order passed in the election petition Shri Bal Thackeray was named as collaborator for having committed corrupt practice the said election. As the said judgment had wide implications, political and otherwise, the day to day

proceedings of the said matter and the final judgment of this Court were widely reported by the press all over India.

11. The petitioner has thereafter gone to refer to the ninth Lok Sabha Elections which were held in November, 1989. He has averred that for the said elections, the said two parties viz. BJP and Shiv Sena had decided to have an alliance as both the parties were purportedly championing the cause of Hindus and wanted to fight the elections on the common plank of 'Hindutwa' and both the parties wanted that this country should be declared as 'Hindu Rashtra'. As per the understanding arrived at between the said two parties, a single candidate of the said two parties was to be put up in different constituencies all over the State of Maharashtra. Both the parties and its leaders had campaigned for such single candidate from a common political platform. Various public meetings, functions, interviews and press conferences were held by the leaders of both the parties—either jointly or separately—appealing to the electors to vote for the single candidate of the BJP—S.S. alliance. In fact, in various election materials such as public advertisement, posters, banners, wall paintings, audio and video cassettes and other means of election campaigning, it was mentioned that the single candidate of either of the two parties was a candidate of the BJP-SS alliance. The respondent also adopted the election plank, policies, statements, etc. made at various functions by the leaders of both the parties for furthering his election winning prospects.

12. The petitioner has thereafter made reference to several election petitions filed in this Court seeking to set aside the elections of the returned candidates on the ground of corrupt practice namely seeking votes in the name of Hindu Religion. He has referred to various orders passed in the said petitions declaring results of the returned candidates as null and void and naming various leaders as collaborators in commission of corrupt practice namely seeking vote in the name of Hindu Religion. Reference is made to the Assembly elections held on 27th February, 1990. Both the BJP and Shiv Sena continued their alliance as well as their campaigning in the name of Hindu Religion. Reference is made to an inaugural election meeting held on 29th January, 1990 at Girgaum Chowpati at Bombay and the concluding meeting held at Shivaji Park, Bombay on 24th February, 1990. In both the meetings S/Shri Bal Thackeray, Manohar Joshi, Chhagan Bhujbal, Pramod Navalkar, Pramod Mahajan, and other leaders of Shiv Sena and BJP made appeals to the voters in the name of Hindu religion. In the course of speeches, S/Shri Bal Thackeray, Pramod Mahajan and others stated that their alliance will continue till they achieve the goal of 'Hindu Rashtra'. The leaders also made a declaration that they will continue to fight the elections by campaigning in the name of religion, no matter what the Courts would do. After referring to various decisions of this Court in different election petitions, the petitioner has stated that about half a dozen other election petitions are pending in this Court. In all these petitions the charge against the winning candidate is that the BJP-Shiv-Sena candidates and their leaders canvassed for votes in the name of Hindu Religion. The petitioners in these

petitions have relied upon speeches of S/Shri Bal Thackeray, Pramod Mahajan, Pramod Navalkar, Chhagan Bhujbal, and others in the election meetings held at different places during the election period. The petitioner has given the above back-ground to support his contention that the plank to fight the elections on Hindutva is pre-determined and pre-planned right from October, 1989 when the 9th Parliamentary elections were held and the same strategy has continued till date.

13. Shri Vashi, the learned Counsel appearing on behalf of the petitioner, has made it clear that the aforesaid averments contained in the petition are given merely in order to give a background as to what has happened during the election period in respect of the elections in question, and the same have not been made a ground for setting aside the election of the respondent.

14. As far as the present petition is concerned, the petitioner has relied upon three election meetings, one which was held at Shivaji Maidan, Thane on 21st May, 1991, at which Sadhvi Reethambara was the main speaker. The second meeting relied upon by the petitioner was held at Gol Maidan, Ulhasnagar on 1st June, 1991 at which Shri L. K. Advani, was the main speaker. The third meeting was held at Kalyan Chowk, Kalyan (W) on 11th June, 1991 where Shri Pramod Mahajan was the main speaker. According to the petitioner, the aforesaid three leaders by their speeches practised undue influence and interfered with a free exercise of electoral right. They appealed for votes on the ground of the respondent's religion and in the process promoted or attempted to promote, feelings of enmity or hatred between different classes of the citizens of India on the ground of religion. The said three leaders were invited to give their respective speeches by the respondent. They were thus the agents of the respondent. They gave their respective speeches with the consent of the respondent. Hence, according to the petitioner, the said leaders as also the respondent are guilty of corrupt practices as envisaged under sections 123(2) and 123(3) and 123(A) of the Act.

15. The respondent in his written statement filed on 24th January, 1992 has denied the diverse averments contained in the petition. He has inter alia contended that the petition is not maintainable and should be dismissed at the threshold since the same is not in conformity with the provisions of Sections 81, 82 and 83 of the Act and as such is liable to be dismissed under Section 86 of the Act and under Order 11, Rule 7 of the Code of Civil Procedure. In the alternative he has contended that the paragraphs which are irrelevant, vexatious, and/or are abuse of process of law should be struck off under Order 6, Rule 16 of the Civil Procedure Code. According to the respondent, there is no cause of action for filing the present petition to set aside the respondent's election on the ground of corrupt practice and the petitioner has failed to make out a case under Sections 123(2), 123(3), and 123(3A) of the Act. He has denied the allegation of corrupt practice either by himself, or through his Agents or supporters. According to the respondent, he owes allegiance to Bharatiya Janata Party on whose ticket the

respondent contested the elections. According to the respondent, he contested the said election on the manifesto publicly declared by his party and on no other grounds. He had denied that he was a candidate jointly sponsored by the Bharatiya Janata Party and Shiv-sena and he has denied that there was an alliance between the two parties. As far as Shiv-Sena is concerned, the BJP had only consented to a seat adjustments to avoid unfruitful conflict as an election strategy. Beyond this, the respondent has nothing to do with the Shiv-Sena. In regard to the three meetings, which have been made subject matter of the petition, the respondent has denied that Sadhvi Reethambara was at any time invited by the candidates of the alleged BJP—Shiv Sena alliance or that she was invited with the knowledge that she was canvassing and appealing to the voters in the name of Hindu Religion. He has denied the allegations in respect of the meeting addressed by Sadhvi Reethambara on 11th May, 1991 at Nagpur. He has denied that in her speech she stated that those who opposed Hindu interests were "Ravanas". According to the respondent, the said Sadhvi Reethambara is in no way concerned with him and her acts and deeds are in no way relevant for the decision of the present petition. The respondent has further denied that he had invited her to Thane or that he had chalked out her programme or that she was invited to come and canvass for him in his constituency or that in such circumstances she came to Thane on 21st May, 1991. He has denied that announcements of that meeting were made in the town with the aid of auto-rickshaws allegedly engaged by him or his workers with his consent. He has denied that the petitioner has asked his workers to attend the said meeting or they narrated to him what had happened in the said meeting. He has denied what is attributed to Sadhvi Reethambara in her speech. He has stated that he has nothing to do with the alleged meetings or the movements of the said Sadhvi Reethambara.

16. As already stated Sadhvi Reethambara in response to the notice issued to her under Section 99 of the Act has filed her written statement. She has admitted that she had delivered a speech at Thane on 21st May, 1991. According to her the said meeting was arranged by VHP and the same had nothing to do with the BJP and the returned candidate. According to her, the meeting was not arranged to sponsor the respondent in any manner whatsoever. There was no consent either express or implied given by the respondent for holding the said meeting nor the respondent had given her any invitation to address the said meeting in his constituency to enhance his poll prospects. According to her the meeting was held by the VHP as part of her campaign all over India which began in the year 1987 for construction of Ram Mandir and to express solidarity in favour of Hindutva i.e. the Indian culture. In substance it is her contention that while delivering the speech from VHP platform on May 21st 1991, at Thane she never acted as agent of the respondent. Neither the respondent invited her to deliver the speech nor had she gone there at his instance, or at the instance of any other person on his behalf or BJP. She acted independently on her own will and whatever views she had expressed in the said meeting were her

personal views. According to her, in the said meeting the respondent was not present.

17. Sadhvi Reethambara has further stated that after the receipt of the notice under Section 99 she made enquiries and came to know that on 20th May, 1991 the respondent had delivered a speech in an election meeting at village Wada, Tal Wada, Distt. Thane which is about 50 Kilometers from Thane. The said meeting was over late at night and therefore the respondent stayed at Thane at the residence of Shri Vishnu Savara at Shivajinagar, in Wada. In the morning at 9.30 a.m. the respondent left Wada after having breakfast at Shri Savara's residence and went to Kasa in Dahanu Parliamentary Constituency which is more than 100 KM away from Shivaji Maidan, Tembi Naka, Thane, where she had delivered the speech on the platform of Vishwa Hindu Parishad. According to her, it was, therefore, impossible for the respondent to attend the said meeting at Thane as village Kasa is at a distance of more than 100 Kms. from Thane. The allegations contained in the petition in respect of the respondent's attending her meeting in Thane on 21st May, 1991 are, therefore, false and frivolous and have been made only with a view to unseat the respondent for the so called alleged corrupt practice which he never committed. She has denied that the respondent welcomed her and was present there at the time of her speech.

18. In regard to her speech she has submitted that reporting made of her speech delivered in Thane on 21st May, 1991 by the Police is cryptic and does not give a correct picture of her thoughts. The said speech does not contain any philosophy because of the wrong reporting. She has thus denied having delivered a speech in the manner in which it has been reported in the police report Exhibit-G.

18. (a) Sadhvi Reethambara has further gone on to state that she is a "Sanyasi" having renounced the world since 1986-87 i.e. since the locks were opened from the Shriram temple at Ayodhya for allowing the people to take blessings of Lord Shriram. She started a campaign of her own awakening people seeking solidarity and support for construction of Shriram Temple at Ayodhya at Lord's birth place. She strongly believes that Shriram is a historical figure and the Ramayana, the great epic, contains the graphic and historical events that took place in "Treta-yuga". Muslim invaders in 15th Century demolished the Shriram temple constructed by Emperor Vikramaditya, situated at the birth place of Lord Shriram and constructed a mosque there. The said mosque was constructed at the direction of the Muslim invader Babar and the said mosque were thereafter popularly called as Babri Masjid. For her, the construction of the said mosque was the monument of the defacement of Indian people and culture and it was a symbol of India's defeat. She therefore earnestly and sincerely feels that the Babri Masjid constructed at the birth place of Lord Shriram was the symbol of the defeat of Indian culture and she believes that a popular movement was necessary to retrieve the lost heritage of Indian culture. In support of her pleas, she is campaigning continuously throughout India and awakening people for gathering support in favour of the construction of Shriram Temple at his birth place.

This campaign is going on since 1987 long before the general elections of 1989 and 1991 and her campaign has nothing to do with the general elections at all. The campaign is still going on and she is vigorously touring throughout India. Her campaign has no connection whatsoever with the BJP and its political philosophy.

19. She has further stated that during her campaign and her speeches she has tried to educate the Indian masses asking them to arise on the occasion for retrieval of their lost heritage and to build the nation strong. Whatever she has stated in her speeches is within the confines of the public order, decency and morality. She has asserted that she has exercised her fundamental rights guaranteed under Article 19, (1)(a), 25 and 29 of the Constitution of India. She has asserted that she is an independent individual having no affiliation with any political party, much less with the Bharatiya Janata Party. She is a free citizen of India; nor being a candidate in the elections held in 1991 for Parliamentary Constituencies, she is entitled to exercise the aforesaid fundamental rights guaranteed under the Constitution. She has stated that the Constitution has guaranteed her fundamental rights and has further conferred the right amongst others to conserve her language, script and culture. While exercising her right guaranteed under Article 29 of the Constitution of India and more particularly defending her personal views about her own culture i.e. Hinduva she has not committed any corrupt practice as defined under Section 123(3) and 123(3A) of the Act. She says that Article 25 allows every citizen to propagate his religion and his religious belief. This right is subject to health, morality and public order, all the three of which are totally irrelevant for the purpose of deciding election petition and particularly the actions and/or omissions of an independent individual who is not a candidate and whose election is not under challenge. She has further submitted that religion can become a subject matter of a political speech during an election and this has been expressly recognised in the judgment of Kultarsingh V/s. Mukhtiar Singh reported in AIR 1965 Supreme Court 141. She has further stated that the speech which she delivered on 21st May, 1991 was not delivered as an agent of the respondent and, therefore, whatever speeches she delivered of this propaganda cannot be held to be binding on the respondent. She has stated that the respondent has not appointed her as an Election Agent within the meaning of Sections 40 and 45 of the Representation of the People Act, 1951. The alleged agency has not been conferred upon her specifically by the respondent or even by implication and, therefore, no action or omission on her part can be attributed to the respondent for any purpose whatsoever. According to her, she not being an election Agent of the respondent, is entitled to propagate her views within the confines of decency and other reasonable restrictions such as public order, blasphemy, libel etc. Referring to the case of Jamuna Prasad Mukheria V/s. Lachhi Ram and others reported in AIR 1954 SC 686 it is contended that the restrictions of free speech during the course of an election campaign can only be sustained if the restrictions can be construed as the condition to be observed by a Parliamentary candidate. Hence the disability or punishment of



any kind cannot be imposed upon a candidate by virtue of somebody else's speech, who is not an election agent or who is not a person to whom consent is accorded.

20. The validity of the notice issued under section 99 is questioned on the ground of non-disclosure of the offence which is alleged to have been committed by her and the particulars of the offending parts of her speech. The election petition is barred on the ground of limitation and the election petition deserves to be dismissed on this ground alone. The petition is also not maintainable since it is not in conformity with the provisions of sections 81, 82 and 83 of the Act and as such the petition is liable to be dismissed under section 86 of the Act and under Order 11 Rule 7 of the Code of Civil Procedure. The allegations pertaining to the provisions of Section 123(3) and 123(3A) are denied. According to her, she has not made any appeal to the electorate requesting them to vote for the respondent because he is a Hindu and she has not appealed to the voters that the petitioner is a bad Hindu and therefore, he should not be given votes by anybody. On the aforesaid and similar other grounds, it is prayed that the notice issued under section 99 be discharged and the election petition be dismissed with costs.

21. It would thus appear that as far as the respondent is concerned, he has denied having invited Sadhvi Reethambara to Thane to canvass votes for him and he has dis-associated himself with the alleged meeting held at Thane on 21st May, 1991. On the other hand, as far as Sadhvi Reethambara is concerned, she has admitted of her having made a speech in the meeting held at Thane on 21st May, 1991. She has, however, denied that the said meeting was an election meeting held in support of the candidature of the respondent. While disputing the correctness of the Police report, Exhibit-G, she has stated that the report is cryptic and does not give a correct picture of her thoughts. She has asserted that her meeting and her speech has nothing to do with the candidature of the respondent. She has asserted that she was on her mission for reconstruction of Shriram temple at Ayodhya. She has asserted her right to defend her personal views about her own culture i.e. Hindutwa. She has asserted her right to speak for the conservation of Hindu Religion and culture and to maintain the dignity of Hindu masses. Since she was not an election agent of the respondent her speech cannot bind the respondent and cannot void his election. In substance she has stated that she did speak on religion. But, according to her, the same will be of no avail to disqualify the respondent in the election in question.

22. The next election meeting which has been made the subject matter of scrutiny in the present petition is the one held at Ulhasnagar on 1st June, 1991. The main speaker of the meeting was Shri L. K. Advani. In this behalf the petitioner avers that Shri L. K. Advani, Ex-President and leader of BJP also visited Ulhasnagar for canvassing on behalf of the respondent at his instance. He came, delivered a speech, appealed to the voters and canvassed to better the prospects of the respondent. The meeting was held at Gol Maidan, Ulhasnagar on 1st June, 1991. The petitioner

came to know that the said meeting was held when he read a report which appeared in a Hindi daily, Navbharat Times, on 2nd June, 1991. In the course of his speech Mr. Advani stated that remembering Shri Ram is equivalent to remembering the country. He said that there was the introduction of BJP. He appealed to the voters in the course of his speech to vote in the name of Hindu religion. He falsely stated that the other political parties were opposed to devotion to Ram (Rambhakti). The respondent was present in the said meeting.

23. In regard to the aforesaid meeting I, by my order passed on 24th September, 1993 (paragraphs 12 to 14), have referred to the evidence pertaining to the aforesaid speech delivered by Shri Advani. I have held that the said speech does not attract the mischief of section 123(3) and (3A) of the Act. In view of the finding no notice was issued to Shri Advani under section 99 of the Act. In view of the said finding, it is not necessary to refer to the written statement of the respondent in regard to the said speech of Shri Advani. No further or better evidence in regard to the speech has been brought on record subsequent to the order passed on 24th September, 1992. Shri Vashi during the course of his argument did attempt to persuade me to hold that the said speech attracts the mischief of section 123(3) and 123(3A) of the Act. Since I have already held, by my order dated 24th September, 1992, that the evidence on record does not even prima facie establish that the speech attracts the mischief of the aforesaid provisions, I am unable in the light of my observation contained in the aforesaid order to hold the contrary. Shri Vashi tried to submit that subsequent to the passing of my order on 24th September, 1992 we have on record the evidence of Shri Pramod Mahajan and hence it would be necessary to examine the speech of Shri Advani in the light of the evidence of Shri Mahajan. In my judgment, it will not be open to scrutinise the speech of Shri Advani in the light of what has been stated by Shri Pramod Mahajan. The speech, made by Shri Advani, has to be considered on its own merits and it has been so considered by me and I have come to a finding that the petitioner has failed to prove even prima facie that the speech attracts the mischief of any of the aforesaid provisions and hence I am constrained to hold that the petitioner has failed to prove that the speech of Shri L. K. Advani offends the provisions of Section 123(3) and 123(3A) of the Act. Hence the election of the respondent cannot be set aside on that ground.

24. The third speech relied upon by the petitioner is a speech delivered by Shri Pramod Mahajan, who is an All India General Secretary of BJP. He had addressed a meeting on 11th June, 1991 at about 10.00 p.m. at Kalyan Chowk, Kalyan (W). In this behalf, the petitioner has averred that Shri Pramod Mahajan, All India General Secretary of BJP was also invited by the respondent to visit his constituency and to canvass for him during the course of electioneering, so that the prospects of his winning the election would improve. As per the said invitation and as per the programme chalked out by the respondent and his workers with his consent, Pramod Mahajan visited the

Constituency. The meeting was attended by the following party workers of the petitioner :

- (1) Daulat Singh Paliwal (P.W. 6), (2) R. B. Singh (P.W. 8) and (3) Dr. Uday Samel, P.W. 7). Pramod Mahajan stated in his speech that secularism preached by other political parties was only a pretence. He stated that the other political parties were appeasing the Muslim minority for the sake of votes. He appealed to the voters to elect the Government which believed in devotion to Shri Ram. The respondent was present in the said meeting. The respondent was sitting on the dias when Pramod Mahajan gave his speech. Shri Mahajan further stated that for prestigious Hindustan and for the construction of Ram temple at Ayodhya voters should elect the respondent who was the candidate for BJP. The area of Kalyan Chowk, Kalyan (West), falls under Kalyan Police Station.

25. The respondent in his written statement has disputed the aforesaid averments, in regard to Shri Pramod Mahajan having been invited by the petitioner to visit his constituency. He has however admitted that Shri Pramod Mahajan had taken part in the election campaign in the Respondent's constituency and had addressed a meeting. He has denied that in his speech Shri Mahajan said that secularism preached by other political parties was only a pretence or that the other parties were appeasing the Muslim minority for the sake of votes. The respondent has stated that the portions of the speech quoted by the petitioner are out of context and hence misleading. The respondent has denied that Shri Pramod Mahajan appealed to the voters to elect the Government which believes in devotion of Ram. He has denied that he was present at the time of the meeting. He has denied that Shri Mahajan further stated that for the prestigious Hindustan and for the construction of Shri Ram temple the voters should elect the respondent who was the candidate of the BJP.

26. After service of the notice under section 99 on Shri Pramod Mahajan he has on 9th March, 1993 filed his written statement. He has denied having committed any corrupt practice while delivering his speech at Kalyan on 11th June, 1991. According to him, he being a Leader of a political party and citizen of India, not being a candidate in the aforesaid elections, is entitled to exercise his fundamental rights guaranteed under the Constitution of India. According to him the Constitution has guaranteed his fundamental rights and has further conferred the right, amongst others, to conserve his religion, language, script and culture. According to him any act done by him while exercising his right guaranteed under Article 25 of the Constitution of India and more particularly defending his personal views about his own religion within the confines of the other fundamental rights guaranteed under the Constitution of India, cannot be treated as corrupt practice within the meaning of section 123(3) and 123(3A) of the Representation of People Act, 1951. According to him Article 25 allows everyone to propagate his religion and his religious beliefs. This right is subject to health, morality and public order, all three

of which are totally irrelevant for the purpose of deciding the election petition, and particularly the actions and/or omissions of a political leader who is not a candidate and whose election is not under challenge. According to him, religion can become a subject matter of a political speech during an election and this has been expressly recognised in the judgement of Kultar Singh V/s. Mukhtiar Singh reported in AIR 1965 S.C. 141.

27. Shri Mahajan has further asserted that he is entitled to carry on a political agitation for conservation of Hindu religion and culture and to maintain the dignity of a Hindu so long as he does not make himself guilty of blasphemous, libel or attack the personal religious beliefs and practices of the rival candidates or does not suggest that not to vote for some other candidate on the ground which will be repugnant to the tenets of the Hinduism or that to vote for the rival candidate would be repugnant to the tenets of the Hindu religions. Since none of these allegations have been made against him either in the Election Petition or in the evidence subsequently led during the hearing of Election Petition, he cannot be brought to this Court for commission of corrupt practices as defined under the provisions of Section 123(3) and 123(3A) of the Act.

28. Shri Mahajan has further stated that not being a candidate in the election held on 15th June, 1991, in Parliamentary Constituency No. 10, Thane, he is entitled to express his personal views about his own religion and propagate his views on an election platform. The speech which he delivered during election campaign of 1991, was not delivered as an agent of the respondent and, therefore, whatever speeches he delivered or the views propagated cannot be held to be binding on the respondent. The respondent has not appointed him as an Election Agent within the meaning of sections 40 and 45 of the Act. The alleged agency, has not been conferred upon him specifically by the respondent or even by implication and, therefore, no action or omission on his part can be attributed to the respondent for any purpose whatsoever. He submit that he being not an election agent of the respondent, he is entitled to propagate his views within the confines of decency and other reasonable restrictions, public order, blasphemy, libel etc. Referring to the case of Jamuna Prasad Mukharia v/s Lachhi Ram and others reported in AIR 1954 SC 686 it is submitted that the Election Law does not stop a man speaking. It merely prescribes conditions which must be observed if one wants to enter Parliament. The election law can impose restrictions only on a parliamentary candidate. They can never be used to stifle the speech of anyone other than the candidate. The speech of a person who is not an election agent of a candidate cannot invite disability on the candidate.

29. The validity of the notice issued under Section 99 is questioned on the ground that the same does not disclose the necessary particulars in respect of the offence alleged to have been committed by him. It does not furnish the necessary particulars and details as are required by law and hence the notice deserves to be quashed. In regard to the speech delivered on 11th June, 1991, at Kalyan Chowk, Kalyan (W) the same does not carry any impression which is



contrary to the provisions of law and more particularly offences under the provisions of Section 123 (3) and 123(3A) of the Act. According to Shri Mahajan, no appeal has been made to the electorate requesting them to vote for the respondent because he is a Hindu. No appeal is made to the voters stating that the petitioner is a bad Hindu and therefore he should not be given votes by anybody.

30. It is contended that the petition is barred under the law of Limitation and deserves to be dismissed. It is also contended that the petition is not maintainable and should be dismissed since it is not in conformity with the provisions of Sections 81, 82 and 83 of the Act. The petition is required to be dismissed under Section 86 of the Act under Rule 7 Order 11 of the Code of Civil Procedure. The election petition deserves to be dismissed on the ground of non-joinder of all the parties. The petitioner has not joined all the candidates as party respondents and on this ground the petition deserves to be dismissed. For the reasons aforesaid, the noticee Shri Mahajan has proved that the notice issued under section 99 should be discharged with costs and the election petition should be dismissed with costs.

31. Hence it would appear that the respondent has conceded that Shri Pramod Mahajan had taken part in the campaign in his constituency and had campaigned and addressed a meeting. The respondent however has denied that he had invited Shri Mahajan to visit his constituency. He has denied the details of the speech alleged to have been made by Shri Mahajan. As per the version of Shri Mahajan the transcript of his speech given in the police report is wholly incomplete and does not give a clear and complete picture of the thoughts which he expressed on 11th June, 1991. The cryptic report does not give full particulars regarding his thoughts or his speech given. Relying on such cryptic report no inference can be drawn regarding commission of corrupt practices within the meaning of Section 123(3) and 123(3A) of the Act. The material placed before the Court is hopelessly inadequate to arrive at a conclusion of commission of corrupt practices and, therefore, the entire notices deserves to be quashed and set aside together with the election petition.

32. Relevant issues were settled on 28th April, 1992 and they are as under :—

- (1) Whether the petition is barred by limitation under section 81 of the Representation of People Act, 1951 ?
- (2) Whether provisions of Section 81 and 82 of the People Representation Act have been complied with by the petitioner and whether for non compliance of the same, petition is liable to be dismissed under Section 86 ?
- (3) Whether the petitioner has failed to furnish material facts and particulars in respect of the corrupt practices and hence whether incomplete cause of action and non-disclosure of cause of action amount to non-compliance with the provisions of Section

83 and hence petition is liable to be dismissed ?

- (4) Whether in the facts and in the circumstances of the case there is no disclosure of material facts as required under Representation of Peoples' Act and hence petition is liable to be dismissed ?
- (5) Whether some of the pleadings being irrelevant and abusive and hence are liable to be struck off as the same are scandalous and abuse of the process of Court under Order 6 Rule 16 of the Civil Procedure Code read with Section 87 of the Representation of Peoples' Act ?
- (6) Whether the Respondent has committed any of the corrupt practices as defined in Section 123(2) of the Representation of Peoples' Act 1951 as alleged in the petition.
- (7) Whether the Election Agent or any other Agent of the Respondent has committed any of the corrupt practices as defined in Section 123(2) of the Representation of People Act 1951 as alleged in the petition ?
- (8) Whether any other person with the consent of the respondent and/or his Election Agent has committed any of the corrupt practices as defined in Section 123(2) of the Representation of People Act 1951 as alleged in the petition ?
- (9) Whether the Respondent has committed any of the corrupt practices as defined in Section 123(3) of the Representation of People Act 1951 as alleged in the petition ?
- (10) Whether the Election Agent or any other Agent of the Respondent has committed any of the corrupt practices as defined in Section 123(3) of the Representation of People Act 1951 as alleged in the petition ?
- (11) Whether any other person with the consent of the Respondent and/or his Election Agent has committed any of the corrupt practices as defined in Section 123(3) of the Representation of People Act 1951 as alleged in the petition ?
- (12) Whether the Respondent has committed any of the corrupt practices as defined in Section 123(3A) of the Representation of People Act, 1951 as alleged in the petition ?
- (13) Whether the Election Agent or any other Agent of the Respondent has committed any of the corrupt practices as defined in Section 123(3A) of the Representation of People Act 1951 as alleged in the petition ?
- (14) Whether any other person with the consent of the Respondent and/or his Election Agent has committed any of corrupt practices as defined in Section 123(3A) of the Representation of People Act 1951 as alleged in the petition ?

(15) Whether the petition is liable to be dismissed in limini because it does not contain annexures to the exhibits to the petition ?

(16) Whether the petitioner is entitled to be declared elected to the Lok Sabha from constituency No. 10 Thane Constituency (Maharashtra) in the election held on 15-6-1991.

(17) Whether the term Hindu, Hindutva, Hindu Rashtra connotes "Religion" and whether appealing the voters using the above said terms amounts to appealing in the name of religion as envisaged under section 123(2) and (3) and amounts to create animosity or hatred etc., as envisaged in Section 123 (3A) of Representation of People Act ?

(18) And Generally

In addition to the above issues some more issues arise out of the pleadings raised by the noticees Sadhvi Reethambara and Shri Pramod Mahajan. They are as under :—

(19) Whether the noticees are entitled to raise the pleas as are covered by issue Nos. 2, 3, 4 and 5. If yes, whether the petition is liable to be dismissed on these pleas ?

(20) Whether the notices issued under section 99 of the Representation of People Act contain sufficient material particulars in order to enable them to meet the charge under section 123(3) and 123(3A) of the Act and if not whether the noticees are liable to be discharged ?

33. Issue No. 1.—The point regarding limitation has been raised in the written statement of the respondent as also in the written statements of Sadhvi Reethambara and Shri Pramod Mahajan. Neither Shri Nitin Pradhan appearing on behalf of Sadhvi Reethambara nor Shri Ram Jethmalani appearing on behalf of Shri Pramod Mahajan have agitated the issue. The issue however has been agitated by Shri Sathe, the learned counsel appearing on behalf of the respondent. According to Shri Sathe, the period of limitation prescribed for filing an election petition is 45 days. The result of the election was declared on 17th June, 1991 and the petition is filed on 1st August, 1991. According to Shri Sathe, the day on which the result of the election is declared, has to be included while computing the period of limitation. If this is done, the petition which is filed on 1st August 1991 is filed on 46th day and hence is barred by the law of limitation. The petition is, therefore, liable to be dismissed under Section 86 for non-compliance of the provisions of Section 81 of the Act. Shri Sathe has contended that the Representation of People Act is a self contained code and the provisions of the Limitation Act are not applicable to the filing of an election petition under the Act. Similarly the General Clauses Act, 1897 also does not apply to the Representation of People Act and hence the day on which the result of the election was declared cannot be omitted while computing the period of limitation and hence the present petition is filed beyond

the period of limitation and the same is therefore liable to be dismissed.

34. In my judgment, there is no merit in the above contention. It may be that the Limitation Act has not been made specifically applicable to the provisions of the Representation of People Act. However, provisions of the General Clauses Act, 1897 would apply. Section 9 of the General Clauses Act provides as under :—

"9. Commencement and termination of time .—

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the words "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

If one examines the above provision one will find that the same is in para materia to the provisions contained in Section 12 of the Limitation Act. Section 12 of the Limitation Act deals with exclusion of time in legal proceedings. The same in so far as is relevant provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. In the case of K. Venketeswara Rao and another v/s. Bekkam Narasimha Reddy and others (AIR 1969 S.C. 872), The Supreme Court observed thus :—

"It is to be noted however that even though the Limitation Act, 1963 does not apply to an election petition provisions like sections 9 and 10 of the General Clauses Act, 1897 providing for computation of time which are in para materia with Sections 12(1) and 4 of the Limitation Act would apply to such a petition."

It is therefore clear that Section 9 of the General Clauses Act will apply. Hence while computing the period of limitation the day on which the results of election were declared will have to be excluded.

In the case of Nitin Bhaurao Patil and Anr., v/s. Manohar Joshi my learned brother Justice Shri S. N. Variava, in Election Petition No. 24 of 1990 had an occasion to consider a similar contention as is raised by Shri Sathe. The question which arose for consideration before Justice Variava was whether the petitioner was entitled to extension of the period of limitation in a case where the 45th day after the declaration of the result of the election fell on a non working day. In this context this is what has been stated :

"In my view, even though the provisions and principles of Limitation Act cannot be imported into Election Law, the General Clauses Act does apply even to the Representation of Peoples Act, 1951."

Reference was made to the case of Hukumdev Narain Yadav v/s. Lali Narain Mishra reported in AIR

(1974) S.C. 480, wherein the following observations are made :—

“4. Three questions which require determination are—

(1) Is the Court closed on Saturday, when the Judges do not sit for the purposes either of S. 10 of the General Clauses Act, or S. 4 of the Limitation Act?....

5. On the question whether the Petitioner could have filed the Petition on Saturday March 18, 1972, what has to be seen is whether the Court can be said to be closed within the meaning of either S. 4 of the Limitation Act, 1963, or Section 10 of the General Clauses Act, 1897, because under both the provisions where the prescribed period of limitation expires on a day when the Court is closed the petition could be filed on a day when the Court re-opens. Where, however, the provisions of the Limitation Act apply, the proviso to S. 10(1) of the General Clauses Act in terms makes that provision itself inapplicable. Under S. 4 of the Limitation Act it is provided that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court re-opens. The Explanation thereof states that a Court shall be deemed to be closed on any day within the meaning of that section if during any part of its normal working hours it remains closed on that day. It was sought to be contended that even if the Limitation Act applies, S. 4 would not apply because an Election Petition is neither a suit, nor an appeal nor an application, notwithstanding the definition of “application” contained in S. 2(b) of the Limitation Act as including a petition. It is, in our view, unnecessary to examine the submission in this context because even if S. 4 of the Limitation Act does not apply, S. 10 of the General Clauses Act will certainly apply to election petitions to be filed under the Act as held by this Court in *Harinder Singh V. Karnail Singh*, 1957 SCR 208—(AIR 1957 SC 271). In that case an election petition had to be filed under R. 119(a) of the Election Rules not later than fourteen days from the terminus a quo prescribed therein, but as the day on which it could be filed was a Sunday he filed it on the next day. The contention of the Solicitor-General was that S. 10 of the General Clauses Act “can apply on its own terms only when the act in question is to be done “within a prescribed period”, that under R. 119(a) of the Election Rules the petition has to be filed “not later than” fourteen days, that two expression do not mean the same thing, the words of the Rule being more peremptory, and that accordingly Section 10 of the General Clauses Act

cannot be invoked in aid of a Petition presented under R. 119, later than fourteen days”. This argument was rejected as being erroneous because “broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.” Of course Section 10(1) of the General Clauses Act does not speak of a holiday, but refers to the Court or office being closed on that last day of the prescribed period to enable a party to do an act or take any proceedings on a certain day or within a prescribed period, as the next day on which the Court or office is open. For that section to apply, on the day when limitation expired, Section 10(1) of the General Clauses Act enables the filing on the next working day of the Court..”.

35. A further reference is made to the case of *Samhadri Satya Narayana Rao v/s. M. Budda Prasad* and others reported in (1991) S.C.J. 281. In this case the Supreme Court has observed as follows.—

“5. This Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 3 SCR 31 and *Hari Shankar Tripathi v. Shiv Harsh* and others, 1976 UJ (SC) (242), has held that Section 4 and 5 of the Limitation Act has no application to the election petitions under the Act. It was further held, following *H. Raja Harinder Singh v. S. Karnail Singh*, 1957 SCR 208 : 1957 SCJ 261, that Section 10 of the General Clauses Act would in terms be applicable to the Election Petitions under the Act.

Based on the aforesaid and other decisions Justice Variava has concluded—“Accordingly it will have to be held that Section 10 of the General Clauses Act applies and that the Petition could be filed on 16th April 1990 i.e. Monday, as on 13th April, 1990 (Good Friday), 14th April, 1980 (a Saturday) 15th April, 1990 (a Sunday) this Court and its offices were closed.”

36. Following the above judgments I hold that the provisions of Section 9 of the General Clauses Act, 1897 apply to the Representation of People Act. Hence while computing the period of limitation, the day on which the results of the elections were declared is required to be excluded and hence the present petition which is filed on 1st August, 1991 will have to be held as having been filed within the prescribed period of limitation. Hence I find that the present petition is filed within the period of limitation. Issue No. 1 is answered accordingly.

37. As far as issue No. 16 is concerned no prayer is made for declaring the petitioner as elected. On the contrary a prayer is made for ordering a fresh election. It is for this reason that all the contesting candidates have not been impleaded to the petition. Hence issue No. 16 is answered in the negative.

38. Issue Nos. 2, 3, 4, 5, 15, 19 and 20.—This takes me to the consideration of issues No. 2, 3, 4, 5, 15, 19 and 20. In this behalf the respondent has taken out Chamber summons No. 1126 of 1991 for dismissal of the election petition under the provisions of Section 86 of the Representation of the People Act, 1951 for non compliance of Sections 81 and 82 of the Act, i.e. not filing the petition within the period of limitation, not supplying the true copies of the petition on the respondent, not annexing annexures and exhibits to the petition and not impleading necessary parties respondents to the petition. In the Chamber Summons a prayer was also made for dismissal of the petition under Order 7 Rule 11 of the Code of Civil Procedure read with Section 87 of the Act for non disclosure of cause of action. In the alternative a prayer was made for striking out various paragraphs in the petition under Order 6 Rule 16 of the Civil Procedure Code as the same are un-necessary, scandalous, frivolous or vexatious or which tend to prejudice, embarrass or delay the fair trial of the petition or is otherwise abuse of the process of Court.

39. By an order passed on 3rd March, 1992, I have rejected the prayer for dismissal of the petition on the aforesaid grounds and have allowed the Chamber Summons to a limited extent of striking out certain averments contained in the petition. The said order was carried by the respondent to the Supreme Court and I am informed that the Special Leave Petition filed by the respondent against the said order was rejected sometime in May, 1992.

40. It has been strenuously urged on behalf of the noticees that the aforesaid order passed by me on 2nd March, 1991 and confirmed by the Supreme Court in May, 1992 does not and cannot bind the noticees. The noticees were not parties before the Court when the orders were passed and hence it will be open to them to make their independent submissions and ask the Court to pass an order which may even be contrary to the order earlier passed.

41. In my judgment, there is no merit in the above contention. What was before the Court while considering the Chamber Summons and what is now before the Court while considering the submissions made on behalf of the noticees are the averments contained in the petition. Further evidence led in the petition does not affect the nature of the pleadings contained in the petition. The judgment given in the Chamber Summons is not a judgment binding only on the parties to the chamber summons. What is before the Court is a constituency and not individual parties. Hence, the judgment would operate as a judgment in Rem and not a judgement in persona. In the circumstances, I am constrained to hold that the finding arrived at in the Chamber Summons are binding on the noticees.

42. It is next contended on behalf of the noticees that the notice served upon them does not disclose the precise charge which they are expected to meet. The notice does not disclose the text of the speeches alleged to have been delivered by the noticees. The notices do not disclose the precise provisions of Section 123(3 and 123(3A) which are alleged to have been infringed by the noticees. The notices are, therefore, liable to be discharged on this ground alone.

43. In this context reliance was placed in the case of Manohar Joshi Vs. Damodar Tatyaba Alias Rupwate and others reported in (1991) 2 SCC 342 wherein it was observed as follows :—

“In view of Sections 82 and 83 of the R. P. Act even in the election petition where allegations of corrupt practices are made, full particulars of the alleged corrupt practices including as full a statement as possible and the names of the parties who are alleged to have committed such practices and the date and the place of the Commission of each such practice have to be furnished. Further, the allegations of the corrupt practice have to be accompanied by an affidavit in support both of the allegations as well as the particulars thereof, and if there are any schedules or annexures to the petition in support of the corrupt practice, they have to be signed by the petitioner and verified by him in the same manner as the petition. This is a mandatory requirement. The object of the said provisions is that the party, and it includes not only the returned candidate but all other candidates against whom the corrupt practice is alleged, must have an adequate notice of the precise allegations made against him so that he has a proper opportunity to meet them.

It is clear from Section 99(1) (a) (i) and (ii) of the R. P. Act that at the time of deciding the petition, the court has to record a finding that a corrupt practice is provided to have been committed and that it is committed by a particular person. The court has not only to name the person but also the nature of the corrupt practice committed by him. If the person is a party to the petition, it is not necessary to hear him separately before recording such finding. However, when he is not a party to the petition, before such serious finding is recorded against him, he must have the same opportunity as the party to the petition, to meet the allegations against him. In that respect, he stands on the same footing as the party to the petition against whom such a finding is to be recorded. He cannot be discriminated against and made to suffer any disadvantage because he is not a party to the petition. This is the precise object which is sought to be secured by the proviso to the section. Therefore, when a notice is issued under section 99

against a person who is not a party to the election petition for holding him guilty of any corrupt practice, the notice should apprise him of the precise charge against him and give him the full particulars thereof.

The trial of an election petition on charge of corrupt practice is of a quasi-criminal nature. The proceedings pursuant to the notice issued by the High Court under Section 99 of the Act are thus of a quasi-criminal nature. Where a corrupt practice is alleged, a heavy burden rests on the person alleging the corrupt practice to prove strictly all the ingredients of the charge. This is because the naming of a person as having committed a corrupt practice has a serious consequence of disqualifying him from being chosen as or from being member of any House of the Parliament or of the Legislative Assembly or Council of a State for a period upto 6 years."

44. Further reference was made to the case of Azhar Hussain V's. Rajiv Gandhi reported in AIR 1986 Supreme Court, 1253, the Supreme Court observed as follows :—

"An election petition can be and must be dismissed under the provisions of Civil Procedure Code if the mandatory requirements enjoined by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with. The Code of Civil Procedure applies to the trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the Court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11 (a). Therefore that Section 83 does not find a place in Section 86 of the Act which authorises dismissal of election petitions in certain contingencies does not mean that powers under CPC cannot be exercised for summarily dismissing the petition if it does not furnish a cause of action in exercise of the powers under the Civil Procedure Code and it is settled law that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all."

45. In this context reference can be made to the case of Balwan Singh Vs. Lakshmi Narain and others, A.I.R. 1960 S. C. 770 wherein it is observed as follows :—

"The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition is this. An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in

the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well founded. If the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. The appellate Court may be justified in setting aside the judgment of the Tribunal if it is satisfied that by reason of absence of full particulars, material prejudice has resulted; and in considering whether material prejudice has resulted, failure to raise and press the objection about the absence of particulars before going to trial must be given due weight."

46. A further reference can be made to the case of Bhagwan Datta Shastri Vs. Ram Ratanji Gupta and others reported in A.I.R. 1960 S. C. 200 wherein it is observed, as follows :—

"There can be no doubt that the requirement of full particulars of corrupt practice in the election petition is of paramount importance, but where, notwithstanding the absence of particulars, the evidence is allowed to be given and taken, the question would not be one of absence of jurisdiction but as to whether there has been any material prejudice occasioned by the absence of particulars."

47. In the instant case, the noticees are not served only with the notice under Section 99, along with the notice they are served with a copy of my order issuing the notices. In the order I have indicated the material evidence which has come on record and which is likely to be used against them. The order contains the text of the speeches delivered by the noticees. Apart from the notice and the order the noticees have been served with the entire record and proceedings of the case which includes the pleadings of the parties and the evidence on record both oral as also the documentary. What has to be looked into is not merely the notice. The notice merely calls upon the noticees to appear before me on a prescribed day in order to answer a charge contained in the notice. The notice is accompanied by my order as also the entire evidence on record. The

notice includes my order and the evidence on record. The material evidence appearing against the noticees and which is likely to be used against them is indicated in my order. The noticees are thus given full notice of the case and the charge they are required to meet. It is futile, in the face of these facts to contend that the notices do not contain a precise charge and are, therefore, liable to be discharged.

48. As far as the respondent is concerned, he was served with only a notice accompanied by a copy of the petition, he merely had the advantage of the averments contained in the petition. The averments include only few stray sentences alleged to have been spoken by the noticees in their respective speeches. The notice served upon the respondent was found to be adequate and in the order passed in the Chamber Summons it was held that the petition was not liable to be dismissed for want of material facts and particulars. It is pertinent to note that the averments in the petition relating to the charge under Section 123(3) and 123 (3-A) pertain to religion only. Similarly, the evidence which has been led is also in respect of religion alone. As far as the noticees are concerned, they have not made any grievances in their written statements. They have not raised a plea that they are prejudiced on account of lack of better particulars. They have gone on with the trial without a murmur. In the circumstances, it would be futile on their part at this stage to contend that the notices are liable to be discharged for want of material facts and particulars. The contention based on the aforesaid plea is, therefore, liable to be rejected. Issues Nos. 2, 3, 4, 5, 15, 19 and 20 are answered accordingly.

49. Issue Nos. 6, 7 and 8.—This takes me to the consideration of issues No. 6, 7 and 8. In this behalf, though the petitioner has raised pleas in support of the charge arising under section 123 (2) no evidence has been led in support. Hence Shri Vashi has been unable to support the said charge. Hence, issue Nos. 6, 7, and 8 are answered in the negative.

50. Issue Nos. 9 and 12.—This takes me to the consideration of issues Nos. 9 and 12. Though, averments are made in support of the plea contained in the above issues no evidence whatsoever has been led in support of the claim that the respondent himself has made an appeal to vote for him on the ground of his religion. Hence, it has not been possible for Shri Vashi to raise any contention in that behalf. Issue Nos. 9 and 12 are therefore, answered in the negative.

51. Issue Nos. 10, 11, 13 and 14.—In support of the plea that the respondent's Agent or any other person with the consent of the respondent had made appeals to vote or refrain from voting on the ground of the religion of the respondent, three meetings have been relied upon by the petitioner. The first meeting was held on 21st May, 1991, where the main speaker was Sadhvi Reethambara. The second meeting was held on 1st June, 1991 and this was addressed by Shri L. K. Advani and the third was held on 11th June, 1991 and this was addressed by Shri Pramod Mahajan. As far as the speech of Shri L. K. Advani

is concerned, I have already found that the same does not offend the provisions of Section 123(3) and 123 (3A). That leaves me to consider only the meetings addressed by Sadhvi Reethambara and Shri Pramod Mahajan.

52. Reliance was placed on the case of A. Yunus Kunju v/s. R. S. Unni and others reported in AIR 1984 Supreme Court, page 960. The Supreme Court observed as follows.—

“A charge of corrupt practice under the Act has to be proved beyond reasonable doubt and the standard of proof is the same as in the criminal case.”

53. As far as the meetings addressed by Sadhvi Reethambara and Shri Pramod Mahajan are concerned, it is common ground that the petitioner himself was not present at the time of the meetings. He was informed about the details of the meetings by his party workers. Hence his evidence in regard to the details which he gathered from his party workers would be hearsay and therefore inadmissible. However, there are certain pieces of evidence which the petitioner has deposed, to his personal knowledge and a reference to the said evidence can be made. In regard to the meeting held on 21st May, 1991 which was presided over by Sadhvi Reethambara, the petitioner has deposed that the meeting was advertised through the press as also by announcements made on loud speakers. He heard the loud speaker announcements. The announcements were made by the BJP. The autorickshaws which carried the loud speakers bore the flags of BJP as also Shivsena.

54. The petitioner has further gone on to state that 70 to 75 per cent voters in his constituency are Hindus. On account of the speeches made in the election campaign by speakers such as Sadhvi Reethambara, Shri L. K. Advani, Shri Pramod Mahajan etc. a sense of Hindu spirit was aroused. They i.e. the voters started thinking that if Ram temple is not constructed at Ayodhya, where else can it be constructed? Emotions were aroused by stating whether the Ram temple will be constructed in Macca and Medina. The only place, where it should be constructed, is in Ayodhya, at Ram Janmabhoomi. The petitioner has further stated that in his constituency no other candidate was fielded by the VHP, RSS, Shiv-sena and Bajrang Dal. In his constituency there are workers of the VHP, RSS, Shivsena and Bajrang Dal. They worked for the BJP candidate i.e. the respondent. According to him, he has been defeated because of the aforesaid campaigning made in favour of the respondent. In cross-examination, the petitioner has admitted that he was not personally present in the election meeting addressed by Sadhvi Reethambara in Thane. Similarly, he was not present at the meeting addressed by Shri Pramod Mahajan at Kalyan and that he was informed about the proceedings of the meeting by his party workers. He has admitted that he has no personal knowledge of what was stated by the leaders in the public speeches and that his workers reported him the details of the meeting and the speeches made in the meeting. He has denied that the respondent canvassed for votes



in the name of Hindu religion is incorrect. In regard to the announcement made in respect of the meeting addressed by Sadhvi Reethambara he has, in the cross-examination on behalf of the notices stated that the announcements were made by the BJP and the autorickshaws making announcements of the meeting bore the flags of BJP as also Shivsena. He saw about 4 or 5 autorickshaws on 19th and 20th May, 1991. He did not note down their registration numbers. He saw this near Shivaji lake at Thane. He was accompanied by some party workers. He did not ask anybody to note down the numbers of the Auto-rickshaws.

55. Hence, it would appear that the evidence of the petitioner, in so far as it pertains to the meeting addressed by Sadhvi Reethambara, is relevant for a very limited purpose viz. advertisements being made in respect of the meeting. He has stated that the announcement in respect of the meeting were made on loud-speakers mounted on autorickshaws and those auto-rickshaws carried the flags of B.J.P. and Shivsena. The petitioner has, through the aforesaid evidence, sought to contend that the meeting held on 21st May, 1991 was a meeting sponsored for the purpose of propagating the candidature of the BJP candidate, the respondent.

56. The next witness examined by the petitioner is P.W. 3, Rajaram Madhavrao Garkal. He is a Senior Police Inspector attached to Thane Nagar Police Station. He has attended the meeting held on 21st May, 1991 which was addressed by Sadhvi Reethambara. As per the usual practice he has prepared a report in respect of the above meeting. He submitted the report to the Special Branch of the Thane Commissioner. He has produced the report which is signed by him. The report was prepared at the Police Station which was scribed by Head Constable, Kulkarni. He is familiar with his handwriting. He dictated and Head Constable Kulkarni wrote down the report as per his dictation. The report was written while he was dictating. The report is marked Exhibit-G and its translation is marked Exhibit-G-1. According to the witness, the report has been duly and accurately prepared to the best of his ability. The witness has produced a hand bill at Exhibit-H which was being distributed at the time of the meeting. Its translation is marked at Exhibit-H-1. The witness has also produced at Exhibit-I, the conditions which were imposed for the user of loud speaker for the aforesaid meeting. Condition No. 1 recites that the speakers of the meeting should not speak or give slogans on the basis of religion or caste which would result into creation of enmity among different groups and adverse effect on cordial relations between those groups. The witness has stated that the report Exhibit-G is regarding the speech delivered by Sadhvi Reethambara at the election meeting held at Shivaji Maidan, Thane. There was no candidate filed by VHP in Thane Lok Sabha constituency. The meeting was held for a candidate who was opposing the Congress (I) candidate. The meeting was held for sponsoring the BJP candidate.

57. The witness is a Senior Police Inspector. At the material time he was on election duty. He is,

therefore, expected to know what was the nature of the meeting. He has deposed that it was an election meeting. He has further deposed that the meeting was held for a candidate who was opposing the Congress (I) candidate. It was held for sponsoring the BJP candidate. This later part of the evidence, it is significant, has not been challenged in his cross-examination.

58. The Police report prepared by the police officer is at Exhibit-G. The English translation of the report, Exhibit G-1 recites as under :

"To,

Dy. Commissioner of Police Sp. Branch,  
Commissioner of Police, Thane.  
Confidential : O.W. No. 1983/1991.  
Police Inspector, Thane City Police Station.

Dated : 21-5-1991

Subject : Regarding the election propaganda meeting of Sadhvi Reethambara held at Shivaji Maidan, Thane, organised by Vishva Hindu Parishad.

Submitted with reference to above.

The meeting of Sadhvi Reethambara who created Ram Wave during her Lok Sabha election propaganda meetings at Gujarat, Madhya Pradesh, Uttar Pradesh held a meeting on 21-5-1991 between 8.30 a.m. and 10.20 a.m. in the jurisdiction of Thane Police Station at Shivaji Maidan under the auspices of Vishva Hindu Parishad.

At the outset Shri Sandeep Kondapurkar Thane District Bajrang Dal Chief (2) Bhagwantrao Patwardhan, (3) Shri Satyopal Malani, Hindu Manch, Thane District, (4) Shri D. S. Shinde, Vice President Vishva Hindu Parishad, Thane, (5) Smt. Shrigandha Amrapurkar, Durga Vahini Mahila Sanghathana addressed the meeting.

All of them stressed the need of Hindu unity in order to eliminate the injustice done on Hindus. On account of Govt. policy to favour the people of particular community Hindus have no value in this country. This Govt. brings different legislation for Hindus and Muslims. Congress Govt. blames us as being communal because we stand by Hindus, but communalism is being created by Congress. Now time has come when Hindus should not close their eyes but they should be awakened. They should not sit silently at their residences with their kitchen and children. All of them should exert their right join in.

After that Sadhvi Reethambara addressed, in the beginning she garlanded the photo of Shri Rama. She presented a Trishul to Shri Anand Dighe--Shivsena Sakha pramukh. She started her speech with a poetry.

She said, Shri Mulayam Singh Yadav, U.P. Chief Minister is a killer and former Prime Ministers Shri Rajiv Gandhi, V. P. Singh and Chandrashekhar are his partners. They being atheist hypocrite all Hindus should unite and teach them a lesson after hoisting Bhagwa at Delhi. There is no need then

to shoot them nor slap them. It is necessary not to vote them. They will die after losing their chair. There is no necessity to kill them otherwise. Their lives are with chair. Bullets for Hindus, purse (money bags) for Mulla Maulvis is their policy. She appealed them to hoist Bhagwa at Delhi.

We will construct the temple there. Those will rule at Delhi who talk about Hindus' welfare, such slogans were shouted. The meeting peacefully ended at 10.30 a.m. No untoward incident took place. Her speech is tape-recorded. Still this report is being submitted.

Sd/-

Sr. Police Inspector,  
Thane City Police Station."

We have on record certain printed material of advertisement in respect of the meeting. The advertisement appeared in the daily 'Nav Bharat Times', dated 20th March, 1991, at Exhibit-A. It advertises the meeting of Sadhvi Reethambara. It describes Sadhvi Reethambara as being a fiery speaker of Hinduwa. The advertisement carries a photograph of Sadhvi Reethambara with an inscription "Jo Hindu Hit Ki Bath Karega. Wo hi desh par Raj Karega". In addition, we have a hand bill which has been produced by the Police Inspector, Garkal, P.W. 3, which, as per the said witness, was being distributed at the time of the meeting. The hand bill is at Exhibit-H. It makes a mention of a meeting being organised by V.H.P. There is no reference to the meeting being organised by BJP. Based on the above material it was contended on behalf of the respondent that there is no satisfactory material before the Court to hold that the meeting was an election meeting and was for supporting the candidature of the respondent. In this context, it is to be noticed that as far as the police report Exhibit-G is concerned it unmistakably describes the meeting as an election meeting. P. W. 5 Garkal at the relevant time was present for the purpose of covering the meeting as also for Bandobust duty. In his evidence he has categorically stated that the election meeting was held for sponsoring the B.J.P. candidate. As already noted, as far as this statement of fact is concerned he has not been specifically contradicted in the cross-examination. His assertion has, therefore, gone unchallenged. He being a Police Officer was present there to cover the meeting and to submit a report to the Special Branch of the Thane Commissioner. In the circumstances, his claim that he knows that the meeting was held for sponsoring B.J.P. candidate cannot be doubted. I do not find any legitimate ground to discard the unchallenged testimony of the Police Officer, when he stated that the meeting was held for sponsoring a B.J.P. candidate. It is not possible to accept the contention of Shri Sathe that the witness has deposed falsely in favour of the petitioner, because the petitioner is a Congress (I) candidate and at the time of the election Shri Sharad Pawar who was the then Chief Minister was also in charge of the Home Department. Moreover, amongst the persons who were present on the dias, as reflected in the police report, included Shri Anand Dighe, who is Pramukh of Thane Unit of Shivsena and it has been elicited in the evidence of the respondent that the said Anand

Dighe had campaigned for the respondent during the election in question. The report shows that apart from Shri Dighe the meeting was also attended by Shri Bhagwan Patwardhan. In regard to the said Bhagwan Patwardhan, P.W. 5, Brijnath Singh, in his evidence has stated that Bhagwan Patwardhan used to be deputed for attending B.J.P. meetings. This part of the evidence, it is significant, has not been challenged in the cross-examination. In the circumstances I am inclined to hold that the meeting which was addressed by Sadhvi Reethambara was an election meeting which was held for sponsoring the B.J.P. candidate, the respondent herein.

59. It is contended that it has not been established that the meeting addressed by Sadhvi Reethambara was an election meeting. It has further not been established that the meeting was an election meeting for the purpose of campaigning for the respondent. I have already referred to the Police Report which recites that the meeting in question was an election meeting. I have no reason to hold that a false statement was recorded in the report. The result of the election were not at that stage known. The filing of the petition was also not anticipated and hence the recital in the police report which is a contemporaneous document that it was an election meeting cannot be doubted. The next question is whether it was a meeting sponsored by the BJP for campaigning for the candidature of the respondent. In this context reference can be made to the evidence of the petitioner. In paragraph 18 of his deposition he has stated that in his constituency no other candidate was fielded by the V.H.P. R.S.S. Shivsena and Bajrang Dal. In his constituency there are workers of the V.H.P. R.S.S. Shivsena and Bajrang Dal. They worked for the B.J.P. candidate i.e. for the respondent. This part of the evidence of the petitioner has gone unchallenged both in the cross-examination on behalf of the respondent as also on behalf of Sadhvi Reethambara. I have already referred to the evidence of P. I. Garkal. In paragraph 5 of his evidence, he has stated that there was no candidate fielded by V.H.P. in the said constituency. The meeting was held for the candidate who was opposing for the Congress (I) candidate. The meeting was held for sponsoring the B.J.P. candidate. This evidence also has gone unchallenged, both in the cross-examination on behalf of the respondent as also in the cross-examination on behalf of Sadhvi Reethambara. I have already found that the evidence of P. I. Garkal that the meeting was an election meeting for the purpose of sponsoring the candidature of the respondent, is reliable and I have no hesitation in accepting the same.

60. I have in the foregoing paragraphs given my finding that Sadhvi Reethambara had by her speech canvassed for votes for the respondent. The above finding is seen to be reinforced by yet another piece of evidence which has been brought on record by the petitioner which in my view would be relevant under the provisions of Section 42 of the Evidence Act. We have on record at Exhibit-G an order passed by me on 21st and 22nd October, 1991 in Election Petition No. 4 of 1991 issuing a similar notice to Sadhvi Reethambara under section 99 of the Act in respect of a speech delivered by her. In that petition there is

evidence on record that Sadhvi Reethambara had addressed a meeting on 21st May, 1991 at Janata Bazar, Lalbaug. Amongst other pieces of evidence, a more accurate version of her speech is available in the form of her tape recorded speech. In paragraph 18 of my order, I have reproduced the translation of the text of her speech which has been tape-recorded. If one has regard to the speech that was delivered by Sadhvi Reethambara on the very day, she delivered the speech in question, there can be no doubt that she was making speeches on election platforms for campaigning for the BJP and Shivsena candidates. The following extract will show that she was appealing for votes for the candidates of the B.J.P.—Shivsena combine :—

“Realise (understand) this wish of Ramji (and attach) (join with) the strength of your determination (Sankalp) and say he who works in the interests of Hindus he only rule the country. Take oath and be determined. 26th is the time for voting. Hindu donates land (Bhumidau) donates cow (Godan), donates daughter (Kanyadan) he who does not have daughter perform Kanyadan of the daughter of other. Now in future is the time for voting not for the job of our nephew, not for the transfer of brother, nor for our aunt, nor for our mother-in-laws, this year the entire Hindu will cast his vote for the Hindustan—Hindurashtra, for the establishment of the Ramrajya (rule of the Ram) for the construction of the Ram temple. With this determination roar like a lion once more. Say he who works in the interest of the Hindus he only will rule the country. Say Jay Shriram, Jay Jay Siaram.”

In view of the above piece of evidence as also the other evidence on record which I have indicated, I hold that the meeting addressed by Sadhvi Reethambara was an election meeting for the purpose of seeking votes for the respondent.

61. Next question which arises for consideration is, whether the respondent was present at the aforesaid meeting which was addressed by Sadhvi Reethambara. The petitioner, in paragraph 11 of the petition has made specific averments in respect of this meeting and in respect of the presence of the respondent at the meeting. The respondent, has dealt with the averments contained in paragraph 11. In paragraph 26 of the written statement, he has not specifically denied his presence at the meeting. Moreover, he has sworn paragraph 26 of the written statement to his personal knowledge. This is another pointer to indicate his presence at the time of the meeting or else he would not have been able to swear to the details of the meeting to his personal knowledge.

62. The petitioner in paragraph 24 (b) and 24 (c) has averred as under :—

“(b) That even after knowing the views of Sadhvi Reethambara, and especially after reading the newspaper reports of the speeches made by Sadhvi Reethambara at Nag-

pur, which were published in the Marathi newspapers 'Tarun Bharat' dated 12th May, 1991, the respondent invited her to canvass for him in a public meeting held on 21st May, 1991 at 8.30 a.m. in the Shivaji Maidan, Ambhali Naka. The respondent remained present in the said meeting. The respondent did not state that he was in disagreement with any of the appeals made by Sadhvi Reethambara. (c) Even otherwise the respondent was present in a meeting of the office bearers of the said alliance, where it was decided to invite Sadhvi Reethambara to canvass for votes. Thus, the respondent had expressly and/or impliedly consented to the offending speeches made by Sadhvi Reethambara.”

63. In reply, the respondent in paragraph 41 of his written statement, has averred as follows :—

“With reference to paragraph No. 24 (b) this respondent denies that the respondent at any time had invited Reethambara Devi to canvass for him in public meeting on 21-5-1992. It is not true that the respondent was present in the meeting of the office bearers or that it was decided to invite Reethambara Devi. The respondent denies that expressly or impliedly he had consented to the alleged offending speeches of Reethambara Devi.”

It would, thus, appear that the respondent has denied that he had invited Sadhvi Reethambara to canvass for him. He has denied his presence at the meeting of the office bearers. He has, however, not denied the specific averment that the respondent remained present in the meeting.

64. Reliance was placed in the case of S. Harcharan Singh v/s. S. Sajjan Singh and others AIR 1985 Supreme Court 236. In paragraph 54 of the judgment, dealing with a similar situation when Shri Prakash Singh Badal has not chosen to come and deny the allegation, this is what has been observed by the Supreme Court :—

“Indisputably he was present at the meetings. He would have been the best person to deny the allegations made about that meeting. It is not a question of merely proving a fact by adverse presumption. In a case where there is positive evidence to prove a fact and there is no denial by the person who is most competent to deny that fact and no reason was given for his not giving evidence especially in the background of his eminence and his position, his relationship with respondent No. 3 and especially in view of the fact that respondent No. 3 had in fact been nominated by the same group on behalf of the Sixth community which Shri Prakash Singh Badal was so intimately connected would lead to the conclusion that the evidence advanced on behalf of the appellant must be accepted.”

65. In the circumstances, I am inclined to hold that as far as the pleadings are concerned the averment contained in the petition to the effect that the respondent was present and had attended the meeting has not been denied in the written statement. There is, therefore, no difficulty in accepting the unchallenged averment that the respondent was present and had attended the said meeting.

66. The petitioner has led evidence of his party workers. P.W. 5 Brijnath Singh Sitaram Singh attended the aforesaid meeting. He learnt about the meeting because of the announcements made on loud-speakers mounted on vehicles which carried the banners of BJP and VHP. Similar banners of the BJP and Shivsena announcing the meeting were displayed at prominent places in the city. A notice was also pasted in the main office of the BJP located near the Thane Railway Station. He had heard of Sadhvi Reethambara prior to the meeting since he had read about her speeches made at different places such as Madhya Pradesh, Gujarat, Uttar Pradesh etc. She was known to make very good speeches on Hinduism. He therefore attended her meeting and heard her speech. He has further stated that no candidates were sponsored either by VHP, Bajrang Dal, RSS and Shivsena in the said constituency. He reached the venue of the meeting at about 8.15 a.m. The meeting was held in a Maidan which was fenced on all the sides. Banners were displayed in the Maidan declaring that VHP and BJP has arranged the meeting. The ground had only one entrance which is located near the stage. While entering the ground he noticed the respondent, the BJP-Shivsena candidate as also Smt. Veena Bhatia, President of the Thane BJP unit present near the gate. A large crowd had gathered on the grounds. While he was waiting he heard the bursting of crackers near the gate. When he went near the gate, he noticed that Sadhvi Reethambara had arrived and she was welcomed by the respondent, Smt. Veena Bhatia and some others and she was ushered on the stage. She was introduced to some people on the stage and was requested to be seated. The respondent thereafter welcomed her, alighted from the stage and stood amongst the audience. He was accompanied by one Shri Kalyanrai. On the stage he noticed Shri Bhagwan Patwardhan of the RSS who is normally deputed for BJP meetings. He also noticed Shri Anand Dighe who is the Chief of the Thane District of the Shivsena. There were three or four other persons whom he does not know. Sadhvi Reethambara was offered floral bouquets, speeches thereafter commenced. Shri Bhagwan Patwardhan spoke first. He stated that injustice is being done to the Hindus in the Hindu Rashtra. For the purpose of Hindu Rashtra, Hindus should be united. A time has come to teach a lesson to the killers. A reference was made to Shri V. P. Singh and Shri Rajiv Gandhi. The speech was inflammatory. 4 to 5 other speakers also spoke. The tenor of which was to criticise the Muslims and to encourage the Hindus and obtain votes in favour of BJP. Sadhvi Reethambara thereafter rose to make her speech. Before sneaking she garlanded the photograph of Lord Ram which was displayed on the stage. She also recited a "shloka" which he does not remember. She spoke for about 40 minutes. When asked about the effect of the speech and what did he feel about it, the witness answered:

"I found that the speech was highly inflammatory. It tended to bring about tension between the Hindus and the Muslims. I noticed three or four Muslims returning from the meeting. They were discussing amongst themselves about the communal speeches which were made. They were complaining whether they were not Indians because they were Muslims and not Hindus. They were also questioning whether their votes were not wanted."

The witness added :—"Sadhvi Reethambara after concluding her speech presented a Trishul to Shri Anand Dighe and gave him her blessings. The tenor of the speech was regarding the Hindus' requirement to support the construction of Ram temple at Ayodhya. It had no reference to Hindus being residents of India. It had also no reference to Hindu as having a culture prevalent in India. It is my view that Hindu is a culture. I am a Hindu by religion."

The witness has been cross-examined at considerable length. The claim of the witness that the respondent was present at the meeting has been challenged. He has denied that his statement that the respondent was standing near the entrance gate of the Maidan is false. He has further denied that the respondent did not go on the stage, welcomed Sadhvi Reethambara and, thereafter, joined the audience. It is pertinent to note that though there is a challenge to the testimony of P.W. 3 P.I. Garkal, and P.W. 4 Brijnath Singh Sitaram Singh about the presence of the respondent at the time of the meeting, no suggestion is made to either of them that the respondent was not present on that day in Thane or that he had gone to Dahanu to canvass for some other similar candidate in Dahanu constituency. Similarly no such case has been put to the petitioner in his cross-examination. The said case is sought to be made for the first time in the evidence of the respondent. The respondent filed a list of witnesses which include names of the Police Officers, whom he desired to examine in order to show that he was at Dahanu on 21st May, 1991 at about the time when Sadhvi Reethambara had addressed the meeting in Thane. By my ruling recorded in paragraph 8, on page 78 of the notes of evidence, I have upheld the objection raised by the petitioner and have declined permission to the respondent to lead evidence in that behalf. The respondent thereafter took out Chamber Summons to amend the written statement to add an averment that he was not present in Thane in the meeting held on 21st May, 1991 and was in Dahanu Constituency. By an order passed on 10th August, 1992 the Chamber Summons was dismissed. The matter was carried to the Supreme Court and the SLP was rejected. After all efforts of the respondent to examine the said witnesses on his behalf had failed, another attempt was made to examine the very same Police Officers through Sadhvi Reethambara, an application was filed on 11th April, 1993 on her behalf to examine the said officers in order to prove the presence of the respondent at Dahanu. The same was also rejected by me by a speaking order. That order was also carried to the Supreme

Court and the Supreme Court declined to interfere since it was at an interlocutory stage. The Supreme Court expressed no opinion on the interpretation which was placed by me in my order.

67. Certain material has been elicited from P.W. 3 P.I. Garkal during the cross-examination on behalf of Sadhvi Reethambara to show that the respondent was not present at the time of the meeting. It is elicited from P. I. Garkal that he knows the respondent Shri Ram Kapse. He was a candidate at the election of 1991. He knows him prior to this election as he was an MLA. He was knowing him by face as also by his name. On being shown his report, exhibit-G, he has stated that the report contains the names of all those who delivered speeches in the meeting. The name of the respondent does not figure as a speaker in the report. The respondent is and was a prominent person. It is not true that the respondent being a candidate was a prominent personality at the meeting of Sadhvi Reethambara. The presence of a candidate at an election meeting is a prominent feature. Being a trained and experienced officer he would not have missed the presence of the respondent if he was present at the meeting. The witness was asked : "Since the name of the respondent does not appear in the report, is it correct that he was not present ? He answered : "I do not remember whether the respondent was present or not. It did not happen that the respondent introduced Sadhvi Reethambara to the audience. Had the respondent spoken a single word, I would have mentioned about it in my report."

68. It is contended on behalf of both the respondent, as also on behalf of Sadhvi Reethambara, that it cannot be held beyond reasonable doubt that the respondent was present at the time of the meeting. Had he remained present the same would not have escaped the attention of P. I. Garkal and P. I. Garkal would not have omitted to mention his name in his report, Exhibit-G. As far as the Police report, Exhibit-G is concerned it mentions that the election meeting was held between 8.30 a.m. and 10.20 a.m. As far as the evidence of P. I. Garkal is concerned, he has stated that before the meeting commenced he had Bandobust duty and after the meeting commenced he stood near the stage. In his deposition P. I. Garkal stated that the meeting was held between 8.30 a.m. and 10.00 a.m. The meeting started at 8.30 a.m. and he was present throughout the meeting. He had gone there for reporting and for maintaining law and order. As far as the evidence of P.W. 5, Brijnath Singh is concerned, he claims that he reached the venue of the meeting at about 8.15 a.m. The meeting was held in a Maidan which is fenced on all the sides. There was heavy police Bandobust at the time of the meeting. While entering the ground he noticed the respondent, BJP-Shivsena candidate present near the gate. A large crowd had gathered on the grounds. While he was waiting they heard the bursting of crackers near the gate. When he went near the gate he noticed that Sadhvi Reethambara had arrived and she was welcomed by the respondent. The respondent after welcoming her alighted from the stage and stood amongst the audience.

69. It would, therefore appear that as far as the evidence of P.W. 5, Brijnath Singh is concerned the same pertains to a period commencing from 8.15 a.m. whereas the evidence of P.I. Garkal relates to event which he noticed after 8.30 a.m. when the meeting had already commenced. Hence the events in respect of the respondent receiving Sadhvi Reethambara introducing her to the audience and thereafter alighting from the stage and joining the audience, may have preceded the arrival of P. I. Garkal near the stage. In the circumstances, the answers elicited in the cross-examination of P. I. Garkal do not necessarily falsify the claim of P.W. 5, Brijnath Singh, when he deposed to the presence of the respondent at the time of the meeting. In the circumstances, I am constrained to hold that the petitioner has proved that the respondent was present at the time of the meeting which was addressed by Sadhvi Reethambara. I am further satisfied that the meeting in question was an election meeting which was convened for sponsoring the candidate of BJP-Shivsena combine who is respondent herein. I further hold that the respondent was present at the time of the meeting.

70. I have already narrated in the foregoing paragraphs the text of the speech of Sadhvi Reethambara as appearing in the Police report, Exhibit-G. It is true that as far as the evidence of Brijnath Singh is concerned, the same gives a more detailed account in respect of the speech. However, I do not find it safe to place reliance on the oral testimony of a party worker who is apt to depose in support of the candidate in whose favour he had campaigned at the election in question. I will therefore proceed to consider the details of the speech as appearing in the Police Report Exhibit-G. The report inter alia recites that in the beginning Sadhvi Reethambara garlanded the photo of Shriram. She presented a Trishul to Shri Anand Dighe, Shivsena Shakra Pramukh. She started the speech with a poetry. She stated that Shri Mulayam Singh Yadav, U.P. Chief Minister, is a killer and former Prime Ministers Shri Rajiv Gandhi, Shri V. P. Singh and Shri Chandrashekhar are his partners. They being atheist and hypocrite all Hindus should unite and teach them a lesson after hoisting Bhagwa at Delhi. There is no need to shoot them or slap them. It is necessary not to vote them. They will die after losing their chair. There is no necessity to kill them otherwise. Their lives are with chairs. Bullets for Hindus, purse (money bags) for Mulla Maulvis is their policy. She appealed them to hoist Bhagwa at Delhi. we will construct the temple there. Those will rule at Delhi who talk about Hindus welfare, such slogans were shouted.

71. In paragraph 5 of the written statement Sadhvi Reethambara has styled the Police Report Exhibit-G as being a cryptic report in respect of her speech and that the report does not reflect the correct purport of her thoughts. That the report is cryptic as not been suggested to P. I. Garkal either in the cross-examination on behalf of respondent or in the cross-examination on behalf of Sadhvi Reethambara. In fact no suggestion has been put to P. I. Garkal that this was not an election meeting and the subject mentioned in the report Exhibit-G regarding the meeting

being an election meeting is false and untrue. In the circumstances, I have no hesitation in holding that the report Exhibit-G is a faithful reproduction of the speech made by Sadhvi Reethambara and the meeting she addressed was an election meeting.

72. If the above speech is construed in the context of the events, which had preceded, in Ram Janmabhoomi, it is clear that Sadhvi Reethambara has styled Shri Mulayam Singh Yadav as a killer of Karsevaks and former Prime Ministers Shri Rajiv Gandhi and Shri V. P. Singh as being his assessors. She has called the aforesaid leaders as atheists and called upon all the Hindus to unite and teach them a lesson. She has called upon the voters to hoist a saffron flag at Delhi, which is a Hindu symbol. She has told the audience that it was not necessary to shoot or slap them and all that was necessary was, not to vote for them, they being atheists. She has stated that in case votes are not cast in their favour they would die after losing their chair of power. There is no need to kill them as their lives are in the chairs of power. She has further gone on to state that the bullets were being shot at Hindus whereas money bags were being given to Muslims. She has appealed to Hindus to hoist the saffron flag at Delhi. After stating that they would construct a temple there she has declared that those will rule Delhi who would talk about Hindus welfare. In my view, the above text of the speech of Sadhvi Reethambara fairly falls within the mischief of Section 123(3) as also under Section 123 (3A) of the Act.

73. By the speech she has solicited votes. Votes are solicited for the respondent who is a Hindu. She has solicited votes on the ground of respondent's religion. She has sought to divide Hindus and Muslims and has promoted feelings of enmity or hatred between them on the ground of religion. This, she has done in order to obtain votes from the Hindu voters, who form majority of the voters in the constituency. She has thereby tried to further the prospect of the election of the respondent. She is, therefore, found guilty of electoral mal-practices covered by the provisions of Section 123(3) and 123(3A) of the Act.

74. The petitioner, in paragraph 18 of his deposition has stated that in his constituency no other candidate was fielded by the VHP, RSS, Shivsena and Bajrang Dal. In his constituency there were working of the VHP, RSS, Shivsena and Bajrang Dal. They worked for the BJP candidate i.e. the respondent.

75. A reference was made to the case of Hara Singh Chara Mohanty v/s. Surendra Mohanty (1974) 2 SCR 38 : AIR 1974 S.C. 47. The Supreme Court pointed out that consent or agency could not be inferred but had to be proved affirmatively like any other fact. In this connection the Court observed as follows :—

“Consent or agency cannot be inferred from remote causes. Consent cannot be inferred from mere close friendship or other relationship or political affiliation. As pointed out in D. P. Mishra's case (AIR 1971 S.C. 856) (supra) however close the relationship unless there is evidence to prove that the

person publishing or writing the editorial was authorised by the returned candidate or he had undertaken to be responsible for all the publications, no consent can be inferred.”

76. It cannot be disputed that Sadhvi Reethambara is a leader of the V.H.P. The petitioner in his deposition has stated that VHP had canvassed for the BJP candidate i.e. the respondent. What is significant is that this statement has not been challenged in cross-examination, either on behalf of respondent or on behalf of Sadhvi Reethambara. I have found that the respondent was present at the meeting. The meeting was an election meeting. The meeting was convened to seek votes for the BJP candidate—the respondent herein. In the circumstances I find that the respondent had given his consent to Sadhvi Reethambara to come to his constituency and propagate votes for him and further that he had given his consent to her for making the aforesaid speech. I further find that the appeals contained in the speech made by Sadhvi Reethambara were made with the consent of the respondent. I, therefore, hold that appeals have been made by the Agent of the respondent with his consent to vote for the respondent and refrain from voting for the other candidates on the ground of the respondent's religion namely Hindu Religion. I therefore hold that the aforesaid speech of Sadhvi Reethambara attracts the mischief of Section 123(3) of the Act. I further hold that by her speech she has promoted or attempted to promote feeling of enmity or hatred between Hindus and Muslims on the ground of religion. I, therefore hold that the said speech also attracts the mischief of Section 123(3A) and hence issue Nos. 10, 11, 13 and 14 are answered in the affirmative in so far as they relate to the speech delivered by Sadhvi Reethambara on 21st May, 1991 at Thane.

77. This takes me to the speech delivered by Shri Pramod Mahajan. He is the All India General Secretary of the BJP. The speech was delivered by him on 11th June, 1991 at Kalyan Chowk, Kalyan (W). As already stated the petitioner was not present at the meeting. Hence whatever is stated by him in respect of the meeting and in respect of the text of the speech delivered by him is hearsay and, therefore, inadmissible. The petitioner has examined P.W. 6, Daulat Singh Paliwal, P.W. 7, Uday alias Prashant Laxman Samel, P.W. 8 Ram Bachan Singh. All of them are his workers. In addition he has examined P.W. 4 Suhas B. Phadke, a Senior Inspector attached to the Bazar Peth Police Station. All the party workers i.e. P.W. 6 Daulat Singh, P.W. 7, Uday and P.W. 8 Ram Bachan Singh, claim to have attended the meeting. They have deposed to what was spoken by Shri Mahajan. P.W. 6, Paliwal has referred to the speeches made by various speakers and has thereafter referred to the speech of Shri Pramod Mahajan in the following terms :—

“Shri Pramod Mahajan thereafter spoke. He dwelt on the Janata Dal and Congress. He spoke of Shri Advani and Shri Ram Kapse, i.e. the respondent. He thereafter spoke on the Ram Mandir and Ram Kapse. He criti-



cised the Janata Dal and Shri V. P. Singh for having raised the Mandal and Babri Masjid issue. He enquired whether Shri V. P. Singh wanted to bury his relations that he has wrecked up the issue. When Lord Ram was born 17,000 years ago, how did the issue of Ram Mandir, Babri Masjid arise at this juncture. He spoke of the Mandal and stated that it would not be wrong to ask for votes in the name of Rama. He stated that what could be achieved by Congress in 43 years, their Government would achieve in 43 days. He stated that there will be only one Prime Minister of the BJP i.e. Shri L. K. Advani. As far as Congress is concerned, there will be many who will be prepared to become Prime Minister but the BJP will have only Shri Advani as the Prime Minister. That is why the Ratha Yatra was taken out by Shri Advani and not by Shri Atal Bihari Vajpai. He stated that the Ram Mandir is not a mere place of worship of Hindus but a place where 70 crore people have their faith in it. In order to strengthen the hands of Shri Advani vote for this Ram i.e. the respondent. He also stated that he knew the respondent as "Ram Bhau" but now he knew that he was "Ramchandra". Kalyan is a sensitive locality. Shri Pramod Mahajan by his speech divided the groups, one who followed Ram Mandir and the other Babri Masjid. On the very day Shri Anand Dighe, the Shivsena Chief of Thane who was arrested under TADA was released. He stated that Shri Anand Dighe has been released by Ram. That if their hands are strengthened they will do such work which the other party has not been able to do."

78. P.W. 7, Uday @ Prashant Laxman Samel, deposed in respect of the speech of Shri Mahajan, in the following terms :

"Shri Pramod Mahajan in his speech stated that in the case the Ex-Prime Minister Shri Rajiv Gandhi had not been assassinated and had the elections taken place on 26th May, 1991 he would have come there that day to felicitate the respondent on his victory in the election. He spoke about the 42 years of Congress rule, 11 months of V. P. Singh rule and 4 months of Chandrashekhar's rule, and criticised how the economy of the country had deteriorated and the gold of the country was required to be pledged. In regard to the Mandal Commission Report, he stated that a false propaganda is being made that the BJP is opposed to the report. He stated that the BJP supports the economically backward class people. He spoke of the Rath Yatra taken out by Shri L. K. Advani. He mentioned that the Rath Yatra had received large support from the Hindus. When the Rathayatra reached Ayodhya he had accom-

panied it. He stated that the idol of Ram Lalla is there and the BJP will construct a Ram temple in place of the Babri Masjid. He spoke of V. P. Singh. He stated that according to V. P. Singh he had sacrificed everything for Babri Masjid. He questioned whether the Samadhi of forefathers of V. P. Singh is located in Babri Masjid. He stated that there was enough injustice that was done to Hindus and in case a Ram temple is to be erected, then you should send Shri Ram Kapse the Ram of the Thane constituency there."

79. P.W. 8 Ram Bachan Singh, spoke in the following terms :—

"Shri Pramod Mahajan in his speech criticised the Congress and stated that it was good that the Ex-Prime Minister Shri Rajiv Gandhi was no more. He has been released from the infighting within the Congress (I) and has gone to the heavenly abode. He stated that Smt. Sonia Gandhi and Shri Rahul Gandhi have been put in problems. He stated that only one urn of the ashes of Shri Rajiv Gandhi was sent to Maharashtra through Shri Nilangekar Patil and one has been taken in Jalgaon by Shri Vijaynval Patil. He stated that the Congress (I) was claiming to have a stable Government. He pointed out that Shri Arjunsingh and Sharad Pawar were staking their claims for the Prime Ministership and Shri Narasimha Rao was playing the role of non playing Captain of Tennis. He stated that the BJP was not fighting against the Congress alone. There was a triangular fight between the Congress (I), BJP and Janata Dal. He thereafter started speaking on Muslims and Ram Janmabhoomi. He criticised Shri V. P. Singh. He stated that BJP had taken out a Rath Yatra. Though initially V. P. Singh did not obstruct but he later obstructed the procession and did not permit them to complete the mission at Ayodhya. He was, therefore, required to leave his seat of authority. V. P. Singh, however, falsely alleged that he had sacrificed his chair for the sake of Babri Masjid. He further stated that Babri Masjid is not the Samadhi of his father and that he will not permit it to be demolished. He criticised the Congress (I) and Janata Dal. He stated that the elections for 200 seats had already taken place and elections for 300 seats was being held. He assured that if BJP is voted to power it will demolish the Babri Masjid and construct the Ram temple in its place. He stated that what the Congress could not do for 43 years, the BJP will do within 43 days. He stated that they are all devotees of Lord Ram. The respondent Ramchandra Kapse was present in their midst. If they wanted to construct a Ram temple in Ayodhya they should vote for their Ramchandra, the respondent. He spoke on the Kashmir prob-

lem and stated that in Kashmir injustice is being done to Hindus. The Kashmir problem was a gift of Congress Government. That the Hindus from Kashmir had been rendered refugees in different parts of the country. He assured that in case the BJP is voted to power the injustice will be set right. He referred to the BJP ruled States of Himachal Pradesh, Rajasthan and M.P. and stated that the said governments were stable. He spoke of the BJP-Shivsena combine rule in the Bombay Municipal Corporation and stated that the administration of the Bombay Municipal Corporation at the hands of the BJP-Shivsena candidates has been satisfactory. He further stated that there was no difficulty in having a BJP ruled government at the Centre since there is no infighting for the premiership as Shri L. K. Advani would be their Prime Minister. He said that in case they want to support Hindutwa and Hindus they should support the candidature of the BJP-Shivsena combine i.e. the respondent, in order to strengthen their hands for construction of Ram Temple."

80. The witness Paliwal (P.W.6) has been cross-examined on behalf of the noticee, Pramod Mahajan. He has admitted that he was actively campaigning for the petitioner during the impugned elections in his ward No. 37. He knows the witnesses Uday Samel and Ram Singh. He campaigned for the petitioner as he was a Congress (I) worker. He is in Congress (I) since 1977. He is a loyal Congress (I) party worker. He looks upon the petitioner as his leader. He has an unimpeachable faith in him. He was therefore very much interested in the victory of the petitioner at the election. He had campaigned for the petitioner to help him to win the election by positive means.

81. The witness Uday alias Samel has been cross-examined on behalf of the noticee Pramod Mahajan. He has stated that he has been in Congress (I) right from the beginning and he is engaged in active politics. He has been loyal to Smt. Indira Gandhi and after her to Shri Rajiv Gandhi. The petitioner was his party candidate. He has considered him as their leader. He considers the petitioner as his leader, as he is senior to him both in age and experience. He was the President of the Kalyan Youth Congress Election Committee.

82. The witness, Ram Bachan Singh, (P.W.8) in his cross-examination by the noticee has stated that he is a dedicated Congress (I) Worker. He is in Congress (I) right from the beginning. He has an unimpeachable faith in his party's programme, ideologies and manifesto. He is prepared to make any sacrifice in the interest of the party.

83. As regards the above witnesses, it has to be kept in mind that they are the party workers of the petitioner. They have worked for the petitioner during the election in question. It is apparent that their

evidence in regard to the speech delivered by Shri Pramod Mahajan is highly interested. It would, therefore, be hazardous to place reliance on their oral testimony for holding as proved what has been stated by them in respect of the speech.

84. The petitioner, however, has examined P.W.4, Suhas Bhalchandra Phadke, Senior Police Inspector, Bazar gate Police Station. At the time of the election he was working as Police Inspector in the Special Branch, Kalyan. The special branch is concerned with collecting intelligence in respect of political parties. He was required to attend the election meetings and submit reports in regard to the meetings. The officials in the special branch attend political meetings and submit their report. They come to know about meetings scheduled to be held because of their enquiries and information collected from various sources. During the election in question he had attended the meeting addressed by Shri Pramod Mahajan. Such meetings are attended in order to note down the points, prepare the report and send it to the Dy. Police Commissioner (Special Branch) Thane. The meeting was held on 11th June, 1991 at Shaankarrao Chowk, Kalyan. He prepared the report in respect of the meeting. The report was scribed by an Head Constable whose name he does not recollect. The report is duly signed by the witness. The witness was taking down notes during the meeting. He thereafter prepared his report. The notes later on were destroyed. The report has been prepared accurately and to the best of his ability. The relevant portion of the speech as found in the report Exh. J and K is in the following terms :—

"5. Shri Pramod Mahajan.—If this election had been over earlier then we would have come for reception of Ram Kapse after forming B.J.P. Shiv Sena alliance Government at the Centre. Rajiv Gandhi was assassinated on 21st May 1991 at 22.20. But within 24 hours congressmen were impressing upon Mrs. Sonia Gandhi to become Congress President who is for Rahul? then she thought about it. Sonia Gandhi did not accept that post and retorted to them that "you should not black mail the martyr remains of my husband." But Naval Patil? Chudhary of Jalgaon emerged the urns in the Tapi river by transporting in a Municipal van. Nilangekar brought only one urn of mortal remain of Rajiv to Bombay. It was taken to Jalgaon. In Nasik there are posters stating that best way to pay homage to Rajiv Gandhi is by voting on hand. There were posters at Nashik, which were tied with the rope by Gandhi family. That was broken after this election all the potatoes of everyone will be scattered separately. Narsinhrao is Tennis Non-Captain. People will give the reigns of the nation in hands of Advani for the B.J.P. Shiv Sena alliance Government. Without this Government congress will not give stable Government. In the year 1977, two and half years, in 1990 eleven months and in 1991 seven months, there was Government of opposition, but those Prime

Ministers had relation with congressmen. After Advani becomes P.M. there will not be any mixture. We have Governments in Rajasthan, M.P. and Himanchal Pradesh. See there is Shiv Sea in Bombay. Look at its performance. We want our majority Government. The results of 200 seats have come and 300 are remaining. There will be triangular contest. Janata Dal functions on Caste and Religion. Idol is not worshiped in mosque, then why does V. P. Singh Government should be staked for Babri Masjid. Gold worth 400 crores was pledged. This congress did not progress in education field. This we will show people have five necessities i.e. food, clothes, housing, education and medicine. Congress has destroyed the contry. V. P. Singh introduced Mandal Commission. I welcomed it at first. Reservation should be given to poor without taking into consideration his caste. In Mandal Commission everything is of Janata except Mrinal Gore and N. G. Gore. Remaining part is ours. Within 4 month Janata Dal has transfused so much poison. National Holiday for Mohammed Paigambar? It was declared by V. P. Singh from Red Fort Rampart. Why not for Shivaji Maharaj? Khushwant singh says that Shivaji was (bastard) without father. This is why a definite heard sporting father met him. Is Babri Masjid the memorial of V. P. Singh's father? How many Shiv Mandirs and temples have been demolished, then nobody's blood boiled. Elect us. Elect us, in the next summer we will send to Kashmir Valley. What suffering 40 lacs Hindus are undergoing there. Refugees were brought from Kuwait. Government incurred 600 crores expenditure on them. Imam says vote for Janata, but handcuff Shankaracharya when he says—vote for B.J.P. and Shiv Sena. Hindus have rebirth. Ram Mandir will be constructed. there is demand of 15 per cent Muslim Reservation in Police. Tomorrow they will demand reservation in Military recruitment. This is the malady. There should be common rule and law for all in the country. V. P. makes use of religion. He (Pranod Mahajan) described the birth place of Ram. Nobody offers Nama at the mosque. We will do within 43 days, which was not possible for the congress during 42 years. Ram Mandir is a symbol of Hindu victory. Our nation is in the row of beggars and no proper arrangement for education. We will do all this. The education and economic system of the country need changes. We will break the hands of sweet distributors on the victory of Pakistan. After Vandemantaram was enchanted.

The meeting terminated peacefully. No untoward incident took place, proper Police Bandobast was kept."

85. In cross-examination P. I. Phadke has stated that he was close to the stage at the time of the meeting. He had taken the notes not ad verbatim.

Three Police Officers were taking down notes in respect of the substance of the speeches made. They made use of the notes taken by each of them for the purpose of making the report. They attend and take notes in respect of speeches of leaders of all political parties; it is not restricted to the leaders of the BJP. The others taking down the notes were of the rank of PSI and Head Constable. One PSI and two Havildars were taking down notes at this particular meeting.

86. It is significant to note that as far as the noticee Shri Pranod Mahajan is concerned, he has not availed of the opportunity of cross-examining this witness, i.e. P. W. 4, Phadke, in respect of his evidence relating to the said meeting. Hence strictly speaking as far as the noticee is concerned, the evidence of P. I. Phadke goes unchallenged. Moreover, I find that P. W. 4, P. I. Phadke is an independent witness and hence the criticism which applies to the evidence of the party workers of the petitioner will not apply to his evidence. Further his evidence receives substantial corroboration from the contemporaneous report which he had prepared in respect of the meeting. Hence the evidence of P. I. Phadke as also the report at Exhibit-J can safely be relied upon and the evidence of the party workers P. W. 6, P. W. 7, P. W. 8, in so far as they lend support to the evidence of P. I. Phadke (P. W. 4) can also be looked into to lend further assurance to the evidence of P. I. Phadke (P. W. 4).

87. Now let us see what the respondent has to say in respect of the said meeting and the speech delivered by Shri Pranod Mahajan. As far as this meeting is concerned, the respondent concedes that he had attended the meeting. According to the respondent Shri Pranod Mahajan is an All India Secretary. His tour programme for the 1991 elections were prepared by the Central office. He or his workers had not invited him. He has denied the authenticity of the contents of the speech as narrated by the petitioner and his witnesses. He has given his own version in regard to the speech. He has denied that Shri Pranod Mahajan asked for votes in the name of Ram Janmabhoomi. He has stated that Shri Mahajan told the audience that as far as the BJP is concerned, it believes in shifting and relocating the Babri Masjid. He criticised the statement of Shri V. P. Singh declaring that he lost his rule because of the dispute in respect of Ram Janmabhoomi. It is not true that he asked for votes in the name of Ram Janmabhoomi. He dwelt on various topics and this was for soliciting votes for him. He has stated that Shri Pranod Mahajan had addressed this meeting for appealing for votes for him. The Ram Janmabhoomi issue is a national problem. Every speaker during the election time spoke about it. It is not true that Shri Pranod Mahajan spent five minutes on Ram Janmabhoomi for the purpose of asking votes for him in the name of Ram Janmabhoomi. Their party's stand on the Ram Janmabhoomi issue is mentioned in their election manifesto. Issuing election manifesto is one of the modes of seeking votes. By mentioning about the Ram Janmabhoomi issue their party wanted to make their stand, in regard to the issue, clear. This was done in order to seek votes. Whatever is done during the election period either effects or helps in securing votes. He

has stated that when Shri Pramod Mahajan spoke about the Ram Janmabhoomi issue, he educated the voters and he also asked for votes for him. He stated that seeking votes in the name of Ram Janmabhoomi is one thing and seeking votes after explaining the voters the party's stand on Ram Janmabhoomi is quite another thing. He told the audience that as far as the BJP is concerned, it believes in shifting and relocating the Babri Masjid. He also stated that the BJP believes in removing all the hurdles in the matter of constructing the Ram temple.

88. Now let us see what Shri Mahajan himself has stated in regard to his speech. After referring to the speeches delivered by the earlier speakers, he has stated that he commenced his speech at 11.00 p.m. He spoke for about an hour. Since it was two years since he spoke he does not remember the speech word by word but he can give the subjects on which he spoke. He stated that he spoke about Mandal Commission. He spoke on the tragic death of Shri Rajiv Gandhi and its impact on the electoral prospects. He spoke about the Ram Janmabhoomi and Babri Masjid disputes. He spoke about the BJP Election Manifesto. He criticised certain remarks of Shri Kushwant Singh about Shivaji Maharaj. He criticised the manner of declaring a public holiday by Shri V. P. Singh from the Red Fort. These were the broad subjects on which he spoke. When shown the police report, Exhibit-J, he stated that the report broadly reproduces the subject on which he spoke. He stated that the sequence, the language and the context are not correct. He has, thereafter, gone on to give his version in regard to the speech as appearing in the police report. He has gone on to give a detailed version of his speech which is recorded in the notes of evidence at pages 222 and 223. This he has done in the face of his earlier statement that he did not remember the details of his speech since it was after two years of his delivering the speech that he was deposing. It is significant to note that the report Exhibit-J was served upon him along with the notice under Section 99. According to him whatever he spoke in his speech had not been properly reproduced in Exhibit-J. He has further stated that while giving instructions for preparing written statement he did not line by line traverse the report and give his version in respect of his speech to his Advocate. He was present in Court for the last three/four days when witnesses were produced for cross-examination. He did not ask his Advocate to cross-examine the Police Officer who had prepared and produced the report, Exhibit-J in Court. The witness has further stated that he had given instructions to his Advocate regarding his speech and has admitted that his written statement does not contain the true version of his speech which he had deposed. He stated that after he read the written statement, he did not point out to his Advocate that it does not contain the details regarding his version in respect of his speech. He has asserted with reference to paragraph 2 of his written statement that he had exercised his right under Article 19(1) (a) 25 and 29 (1) while he delivered his speech on the 11th of June, 1991.

89. In regard to the Election Manifesto he has stated that the Election Manifesto is prepared in

order to project the party's programmes and policies. A manifesto is a basic document. A manifesto is for appealing for votes. A manifesto is not largely circulated through the advertising agencies etc. so as to reach the maximum number of voters. A few thousand copies are printed. They are given to the press and to important party workers. It is not largely circulated and it is not distributed to the workers. In front page of the manifesto there is an election symbol of the BJP followed by an inscription. He has stated :

"It is not true that after partition there has been a complete divide and estrangement between Hindus and Muslims. I would never say such a thing from an election platform. Similarly, it should never find place in any election material. If such a thing is stated it would result in further estrangement between Hindus and Muslims."

Now let us see what the BJP Election Manifesto has to say on the subject. In the last paragraph of the English version of the manifesto, Exhibit-3, this is what has been stated :—

"As the party of law, order and justice, it would ensure the security of life, limb and honour of all citizens. It seeks the restoration of Ram Janmabhoomi in Ayodhya only by way of a symbolic righting of historic wrongs, so that the old unhappy chapter of acrimony could be ended and a Grand National Reconciliation effected. Hindus and Muslims are blood-brothers. But on account of historical reasons their relationship has not been harmonious. It shall be the endeavour of BJP to make all Indians Fraternal and friendly once again.

In the Hindi version of the manifesto Exhibit-L the front page depicts an election symbol of the BJP and the same is followed by an inscription "RAMRAJYA KI AOR". On the next page it is recited as under :

"आज देश इतिहास के ऐसे चौराहे पर खड़ा है जहाँ से सही राह मिलने पर विकास की ओर उन्मुख हो सकता है और यही गलत दिशा की ओर मड़ गया तो गंभीर संकटों में फँस सकता है ।

कानून व्यवस्था और न्याय में विश्वास रखने वाला यह दल भारत वर्ष के प्रत्येक नागरिक के जीवन और सम्मान की सुरक्षा का आश्वसमान देता है । अयोध्या में रामजन्म भूमि की पुनर्स्थापना इतिहास की गलतियों को प्रतीक रूप में सुधारने का प्रयास है । जिससे कि कटुता का यह पुराना अध्याय यहीं समाप्त हो जाए और बृहद राष्ट्रीय राज की स्थापना हो सके । हिन्दू मुस्लिम सगे भाईयों के भाति है किन्तु देश विभाजन के कारण वे आज मिरा भी नहीं रह गए हैं । ऐसे में भारतीय जनता पार्टी का यह प्रयास रहेगा कि हिन्दू और मुसलमानों में फिर से भातृत्व और मित्रता स्थापित हो सके । "

90. It would, thus, appear what according to Shri Pramod Mahajan is objectionable on an election platform, is found prominently mentioned in the manifesto of the B.J.P. Hence, on his own showing what is stated in the manifesto would result in further estrangement between Hindus and Muslims. Hence, on the showing of Shri Mahajan himself, who is none else but the All India Secretary of the B.J.P. the B.J.P. has contested the present elections on grounds which have promoted or attempted to promote feelings of enmity or hatred between the Hindus and Muslims on the grounds of religion and the same squarely attracts the provisions of Section 123(3A) of the Act. As far as the respondent is concerned, he has stated, thus:

"It is true that if a person were to say that after partition there are disputes and absence of good relations between Hindus and Muslims he will be creating a rift between them. If a person were to state on an election platform that the relations between the Hindus and Muslims after partition have never remained friendly and have become strained, it would be improper. One should never say this."

With reference to the party manifesto (Exhibit 3) he has stated as under:

"51. It is not correct that our party's concept of construction of Ram Janmabhoomi at Ayodhya and the disharmonious relations between Hindus and Muslims are clubbed in one paragraph which is the last paragraph of page-1. In the Paragraph the history regarding the disharmony between Hindus and Muslims has been narrated. This has nothing to do only with the partition of India. Partition is only one of the factors mentioned in the paragraph. The reference to Ram Janmabhoomi in Ayodhya has been quoted in this paragraph merely as an instance of the disharmony between Hindus and Muslims. A way to solve that disharmony is suggested in this paragraph, by stating, "It seeks the restoration of Ram Janmabhoomi in Ayodhya only by way of symbolic righting of historic wrong so that the old unhappy chapter of acrimony should be ended, and a grand national reconciliation effected." The reconciliation of the relations is sought to be brought about by restoration of Ram Janmabhoomi in Ayodhya."

He has further stated that the English Manifesto (Exhibit-3) is the proper reproduction of their manifesto. The Hindi Manifesto, Exhibit-L, does not render a proper translation. It is true that the Hindi version of the Manifesto is improper as it brings about a rift between Hindus and Muslims. It is thus apparent that on the showing of both the respondent as also of his party leader Shri Pramod Mahajan, the Election Manifesto on which the B.J.P. has contested the instant elections brings about an estrangement between Hindus and Muslims and this would clearly attract the mischief of Section 123(3A) of the Act. As far as Shri Pramod

Mahajan's speech is concerned, I am not inclined to place the reliance on the oral testimony of the party workers of the petitioner. However, I find that the police report in respect of the speech, at Exhibit-J gives a reasonably fair report in regard to the speech. In addition, we have the version of the speech as deposed by the respondent as also the noticee Shri Pramod Mahajan. As far as Shri Pramod Mahajan is concerned, he has asserted that he had exercised his right under Articles 19(1)(a), 25 and 29(1) while he delivered the speech. In other words, according to Shri Mahajan, he did speak on religion and he has a fundamental right to do so.

91. In regard to the Manifesto, the respondent in his evidence has inter alia stated that both in 1989 and in the year 1991 the BJP contested elections on its own election manifesto and policies. He has further stated that Shri L. K. Advani in his speech delivered on 1st June, 1991 at Ulhasnagar spoke about the B.J.P. policy in respect of the Babri Masjid and Ram Janmabhoomi issue. He suggested the solution of the issue by having both the Babri Masjid and Ram Janmabhoomi at Ayodhya. He suggested the shifting of Babri Masjid without dismantling it brick by brick which is possible under modern technology. He suggested the construction of the Ram temple on its site since the sentiments of the Hindus believe that it is the site of Ram's birth place. He also stated that the communal disputes i.e. Yudh can be resolved without confrontation. He also stated that the minor dispute i.e. Yudh can be resolved without confrontation. He has thereafter corrected himself by saying that he did not use the word Yudh but Sanghrash. This topic lasted for about five minutes. The entire speech of Shri Advani was in consonance with the election manifesto of the BJP.

92. The respondent has further stated that the BJP in its election manifesto has made clear its stance. The BJP Election manifesto states :—

"BJP firmly believes that construction of Shri Ram Mandir at Janmasthan is a symbol of the vindication of our cultural heritage and national self respect. For BJP it is purely a national issue and it will not allow any vested interests to give it a sectarian and communal colour. Hence party is committed to build Shri Ram Mandir at Janmasthan by relocating super imposed Babri structure with due respect."

He has added that during his election campaign which he commenced on 9th April, 1991 and continued till two days prior to the poll, he campaigned on the basis of the election manifesto of the BJP at the Central Level and the election manifesto of the State of Maharashtra. The contents of the manifesto are explained to the voters. The newspapers also carry major contents of the manifesto. In the election speeches, the issue regarding Ram Janmabhoomi was sometimes explained. His workers did not explain the issue of Ram Janmabhoomi to the voters during the election campaign. However, during speeches made at election meetings wherever possible it was explained. If a voter discussed the issue it was explained to him. In the

election meeting prominent leaders make speeches without consulting the candidates. Whatever is spoken by the prominent leaders is binding on the candidates as long as there is no differences between them. In case of differences, the same can be voiced by the candidate. Such difference can be voiced after the meeting, through the press media. Whatever is stated in conformity with the party manifesto cannot be disputed by the candidate. When shown the Manifesto Exhibit-3, the respondent has agreed that Hindus and Muslims have lived in this country for centuries as brothers. He does not agree that after partition there is a complete estrangement between Hindus and Muslims. The relations were strained at the time of partition. He does not agree that after partition Hindus and Muslims are not friendly. The meaning they attach to Ram Rajya which term is used on the cover page of their manifesto can be found in various advertisements issued by their party. He cannot say whether its meaning can be found out by reading the manifesto itself. It is not correct that a person who has not seen the advertisements will not get the total meaning of the term Ram Rajya by reading their election manifesto. A person reading the manifesto will get the full meaning of the term Ram Rajya. He cannot say if the easiest way of explaining the term Ram Rajya is to state that it is that rule of law which was propounded by Mahatma Gandhi. That would be one of the ways. The witness adds that Indians know that Ram Rajya means the ideal rule of law. In regard to the last paragraph of page 1, of manifesto Exhibit-3, the respondent has stated, thus :

"In this paragraph the history regarding the disharmony between Hindus and Muslims has been narrated. This has nothing to do only with the partition of India. Partition is only one of the factors mentioned in the paragraph. The reference to Ram Janmabhoomi in Ayodhya has been quoted in this paragraph merely as an instance of the disharmony between Hindus and Muslims. A way to solve that disharmony is suggested in this paragraph, by stating, "it seeks the restoration of Ram Janmabhoomi in Ayodhya only by way of symbolic righting of historic wrongs, so that the old unhappy chapter of acrimony should be ended, and a grand national reconciliation effected." The reconciliation of the relations is sought to be brought about by restoration of Ram Janmabhoomi in Ayodhya."

93. As regards the Manifesto, the respondent has further stated, thus :

"The manifesto is released to the Press and the same reaches the voters through the media also. The effect of reaching the manifesto to the voters either by the party workers or through the media is to receive votes. It is true that the last paragraph on page 1 of our English manifesto (Exhibit 3) makes a reference to partition. The reference to partition in the said paragraph is proper in view of my evidence at page 123. I reaffirm whatever I have stated at pages 123 and 124."

The respondent has further stated that he has widely campaigned on the basis of Ram Rajya as is explained in their election manifesto. He did not campaign on the basis of protecting the culture of their country. It is not their party's stance that all those who live in Hindustan are Hindus. Shri Pramod Mahajan had addressed this meeting for appealing for votes for him. The Ram Janmabhoomi issue is a national problem. Every speaker during the election time spoke about it. Their party's stance on the Ram Janmabhoomi issue is mentioned in their election manifesto. Issuing election manifesto is one of the modes for seeking votes. By mentioning about the Ram Janmabhoomi issue their party wanted to make their stand in regard to the issue clear. This was done in order to seek votes. Whatever is done during election period either affects or helps in securing votes. Some party workers when asked by the voters to explain their party's stand in regard to the Ram Janmabhoomi issue had explained their party's stand on lines with what is mentioned in their election manifesto. When shown the advertisement Exhibit-D, the respondent stated as under :—

"I am shown the advertisement appearing in Exhibit-D. The slogan appearing in the advertisement, "Ek Desh Ek Samaj Aari Ek Kayada, Ya Tatvancha Agrah Dhamachya Pakshalacha Aapli Mate Dyaa" is not as per our election manifesto. We have not used those exact words. Our concept is "Ek Rasa Samaj". I do not think that the slogan appearing in the advertisement relates to a common civil code. The slogan appearing in the advertisement, "Ramjanmabhoomivar Ekatmateche Mandir Ubha Karayala Siddha Vhai" and "Yaa Mandalicha Rammandirala Virodha Kaa" are in consonance with our party policies. The slogan "Mhaniech Kharya Arthana Yaa Deshaat Punhaa Ramrajya Mandal" is not in consonance with our party policies. Though both the advertisement as also our election manifesto speak of Ram Rajya, even then they are not consistent with each other. This is because the advertisement first speaks of Ram Janmabhoomi and thereafter of the Ram Rajya. The Ram Rajya that we speak about has nothing to do with the construction of the Ram temple. I have said about Hindutva as a way of life and not as a nation.

Questions : If a person were to equate Hindutva with a nation, would it be a wrong statement?

Answer : I have not thought about it. I am now shown para 51 of my written statement, where I have averred that "Hindutva is not synonymous with the term religion but is a way of life or could be considered as a nation....".



The slogan appearing in the advertisement, "Hindutva Jagat Taracha Rashtra Jagat" is as per our party's policies. It is true that by the advertisement votes are sought. It is true that the advertisement depicts pictures of Karsevaks who had hoisted a flag on the disputed structure at Ayodhya. The advertisement also depicts a temple. I do not know whether it is the temple which is proposed to be constructed on the site. No candidate of the V.H.P. had contested elections from Maharashtra. The advertisement criticises Janta Dal and Janta Dal (S) as also the Congress Party as being responsible for the killings of the Karsevaks. Voters who are impressed by this advertisement will not vote for these parties. The main contest during my election was between the Congress and B.J.P."

94. Placing reliance on the above evidence, it is submitted on behalf of the petitioner that the respondent, his party leaders and the B.J.P. has exploited the unfortunate dispute regarding Ramjanabhoomi Babri Masjid to whip up sentiments and to create enmity between Hindus and Muslims in order to secure votes of Hindus, who form the majority of the votes, in favour of the respondent, who is also a Hindu. In my view, there is considerable force in the contention raised.

95. In addition to the above material, reliance is placed on the cross-examination of the petitioner at the instance of the notice Shri Pramod Mahajan. The petitioner has stated that the election manifesto contains the work done by the party in the past and the work which it proposes to do in future. The manifesto gives an overall picture of the philosophy and ideology of party. The work of preparing the manifesto is usually entrusted to a very senior member of the party. It is released only after it is approved by the Parliamentary party. This is so in regard to Congress Party also. He had read their party election manifesto prior to the elections held in 1991. He has tendered the election manifesto of the Congress Party at Exhibit-6. According to him, the manifesto contains the policy statements of the Congress (I) Party on all public issues relevant for 1991 elections. When shown a portion of the manifesto he has stated that the same deals with Ram Janmabhoomi and Babri Masjid issue. It further states that the Congress (I) fully respects the sentiments of both the communities involved. If a settlement cannot be reached all parties must respect the order and the verdict of the Court. The Congress is for the construction of the temple without dismantling the mosque. The Congress (I) is of the firm view that the status quo as existing in respect of all places of worship as on 15th August, 1947 should not now be altered and any controversy over any place of worship, such as Somnath temple, should be foreclosed. To achieve these objects statutory measures will be taken. The witness has stated that he knows about the Ram Janmabhoomi Babri Masjid issue. The first paragraph (of the manifesto) contains the point of view of the Congress (I) party in respect of the

issue and its way of solving the problem of construction of Ram temple.

96. In respect of the election manifesto of the B.J.P., Exhibit-3, the petitioner has stated that is mentioned under the caption "Shri Ram Mandir at Janmasthan". that "B.J.P. firmly believes that construction of Shriram Mandir at Janmasthan is a symbol of the vindication of our cultural heritage and national self respect. For B.J.P. it is purely a national issue and it will not allow any vested interest to give it a sectarian and communal colour. Hence party is committed to build the Ram Mandir at Janmasthan by relicating Superimposed Babri structure with due respect." The witness has further stated that it is true that the above paragraph contained in the manifesto of the National Front and B.J.P. contains the view of those parties on the public issue of Ram Janmabhoomi-Babri Masjid, relevant to the 1991 Lok Sabha election. To a question asked the witness has stated, thus :

"It is true that my party workers were criticising that the B.J.P. was taking into account the interests only of the Hindus and only of Ram Janmabhoomi and were ignoring the interest of the Muslims and the Babri Masjid."

The witness has further stated that he agrees that the Ram Janmabhoomi Babri Masjid issue is a religious issue.

97. In regard to the Independence Day speech given by the then Prime Minister, Shri V.P. Singh, he has stated that public holidays are seldom declared in these speeches. Public holidays are declared by issuing notifications in Gazettes. In his view, holidays should not be declared in such speeches. In the speech addressed to the Nation from the Red Fort on 15th August, 1990 Shri V.P. Singh for the first time had declared the birth date of Mohammed Prophet as a National Holiday. The announcement was criticised by the members of the public. He does not remember if one of the criticisms was that if the birth date of Mohammed the Prophet could be declared as holiday, why the birth date of Shivaji Maharaj and Ram Navmi should not be so declared. He stated that it was criticised on the ground that same was announced in order to appease a minority section namely the Muslims. In regard to Shri Kushwant Singh he stated that he had heard in the first week of May, 1991 that Shri Kushwant Singh had described Shivaji Maharaj as a bastard. Some controversy had arisen on that score.

98. Based on the aforesaid cross-examination, it was sought to be contended that the issue in respect of Ram Janmabhoomi had become a national issue and every party had expressed its views on the issue in their respective election manifestos as also through their election campaign. Hence, no fault could be found with the contents of the B.J.P. election manifesto and the speeches made by their leaders during the election campaign.

99. It may be that the Ramjanmabhoomi-Babri Masjid issue has become a national issue. This would, undoubtedly, entitle the political parties to speak on the issue and air their views on the subject and suggest, what, according to them, would be a proper solution to the problem. This, however, does not mean that political parties can use the issue for whipping up emotions and sentiments and bring about a divide between different classes of the people namely the Hindus and Muslims on the ground of religion. The issue cannot be used for seeking votes on the ground of religion. If, a candidate or a particular party, which the candidate represents, is found guilty of doing so the candidate and all those who are found guilty of committing electoral malpractices are liable to a disqualification provided under the Act.

100. The very same manifesto of the B.J.P. had come up for consideration before the Supreme Court, though in a different context, in the case of "S.R. Bommai & Ors. etc. Vs. Union of India and others etc.", reported in J.T. 1994(2) S. C. 215. It was observed in that case as follows :

"In May/June, 1991, mid-term poll was held to Lok Sabha. The manifesto issued by the BJP on the eve of MAY/June 1991 midterm poll states that the BJP "seeks the restoration of Ram Janamabhoomi in Ayodhya only by way of symbolic righting of historic wrongs, so that the old unhappy chapter of acrimony could be ended, and a Grand National Reconciliation effected." At another place under the head "Shri Ram Mandir at Janamasthan" the following statement occurs : "BJP firmly believes that construction of Ram Mandir at Janamasthan is a symbol of the vindication of our cultural heritage and national self respect. For BJP it is purely a national issue and it will not allow any vested interests to give it a sectarian and communal colour.

Hence, the party is committed to build Shri Ram Mandir at Janamasthan by relocating super-imposed Babri structure with due respect". By themselves, the above statements may not mean that the programme envisaged unlawful or forcible demolition of the disputed structure. The said statements are also capable of being understood as meaning that the party proposed to vindicate their stand by constitutional means that the disputed structure was in fact the Ram Janamasthan which was forcibly converted into a mosque by Emperor Babar and that only thereafter they would relocate the said structure and build Shri Ram Temple at that site." However, the above statement when read in the speeches and acts of the leaders of the BJP, give room for another interpretation as well."

As observed, the manifesto of the BJP as it stands cannot necessarily give rise to a finding that the BJP had contested the present elections on the basis of religion. The aforesaid manifesto will however, have to be judged and assessed on the basis of the speeches made by their leaders more particularly the speech delivered by Shri Pramod Mahajan, All India Secretary of the B.J.P.

101. I have already reproduced portions of his evidence in the earlier paragraphs of this judgment. I have also reproduced his views on whether certain statements appearing in the election manifesto should or should not be spoken on an election platform. I have found that, on his own showing, he, as also the BJP have canvassed in the name of Hindu Religion. They have sought votes by creating enmity between the Hindus and Muslims. This will attract the mischief of Sections 123(3) and 123(3A) of the Act. The aforesaid acts have been committed by him as an agent of the respondent. I hold that he is in the position of "any other agent" of the respondent. He also falls in the category of "any other person with the consent of the respondent." I further hold that he has committed electoral malpractices with the consent of the respondent.

102. Reliance is placed on the Places of Worship (Special Provisions) Act, 1991. Section 3 of the Act creates Bar of conversion of places of worship in the following terms :—

"No person shall convert any place of worship of any religious denomination or

any section thereof into a place of worship of a different section of the same religions denomination or of a different religious denomination or any section thereof."

Section 4 provides as under :—

"It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be same as it existed on that day.

Section 5 has made an exception in regard to applicability of the Act in so far as it concerns Ram Janma Bhumi - Babri Masjid. Section 5 provides :—

"Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship."

On the basis of the above provision, it is submitted that even the legislature has taken into account the fact that Ram Janma Bhumi-Babri Masjid has become a national issue and hence every political party was entitled during the election campaign to express their respective views in regard to the issue. Hence if the BJP had expressed its views, and suggested ways to solve the dispute no exception can be taken.

103. The Act has come into force on 18th September, 1991 and it is submitted on behalf of the petitioner that the same will have no application to the election which has been held prior thereto. In my view, whether the Act has been passed prior or later to the election in question is of little significance. The Act undoubtedly lends support to the contention of the respondent that the issue has become a national issue and therefore the respondent is justified in his contention that like all other political parties BJP was also justified in expressing its views on the issue and suggesting its solutions. The question which has to be considered in the present petition is not whether the BJP was justified or not in expressing its views on the above issue. The question is whether the respondent through the speeches delivered by Sadhvi Rethambara and Shri Pramod Mahajan had asked for votes in the name of Hindu religion which is the religion of the respondent. The further question is whether the respondent through the said speeches has promoted or attempted to promote feelings of enmity or hatred between Hindus and Muslims on the ground of religion.

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104. In the case of Kanti Prasad Jayshankar Yagnik v/s. Purshottamdas Ranchhoddas Patel and others, reported in A.I.R. 1969 S.C. page 851, the Supreme Court observed thus :—

"There is no bar to a candidate or his supporters appealing to the electors not to vote for the Congress in the name of religion. What Section 123(3) bars is that an appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, i.e. the religion of the candidate.

"The law does not place any bar on describing a party as irreligious or saying that because that political party is irreligious natural calamities have resulted because of its disregard of religion.

"Before a statement can be considered as an attempt to induce an elector to believe that he will be rendered an object of spiritual censure, if he acts in a particular manner, that statement must have been made by a person who is a religious head of the majority of the electors in the constituency concerned or exercised great influence on them.

"Appeal to voters to vote for particular person because he is Brahmin and one minister must be a Brahmin—It is an appeal to vote on ground of that person's caste."

In the said case the statement attributed was to the following :—

"Vijaykumarbhai has gone. A Brahmin Minister must be there and hence Kantilalbhai is going to be a minister, hence vote for him. We must have at least one minister who is a Brahmin. Hence vote for Kantilalbhai. At the same time vote of Bhaikaka and H. M. Patel by putting your voting mark on the star."

In this context the Supreme Court observed as follows :—

"The last passage in Exhibit 'K' clearly fell within the mischief of Sec. 123(3). The High Court in this connection observed :—

"The reference to Vijaykumarbhai is to Vijaykumar Trivedi, who was a Brahmin and was a minister in the Gujarat Government till March 1967, and

when this speech was delivered. The reference to Kantilalbhai is to the first respondent, who is also a Brahmin and the reference to Bhaikaka is to Bhailalbhai Patel, leader of the Swatantra Party and H. M. Patel is another leader of the Swatantra Party and Shambhu Maharaj was asking in this connection was that it was necessary that there should be one Brahmin in the Gujarat State Ministry and if one Brahmin, Vijaykumar Trivedi, was to leave the ministry, another Brahmin Minister, viz. the first respondent should be first elected so that he might get a seat in the Legislature and thereafter become a minister, and thus it is clear that in the passage, Shambhu Maharaj was asking the people to vote for the first respondent because he was a Brahmin by caste. It has been stated as a categorical statement that there must be at least one Minister, who was a Brahmin. Under Section 123(3) of the Act, an appeal by any person to vote for any person on the ground of his caste or community is a corrupt practice, provided, of course, that such person has made such appeal with the consent of the candidate concerned. I will come to the question of consent a bit later on, but it is clear that in this particular passage an appeal was being made to the electors to cast their votes for the first respondent because the first respondent is a Brahmin and also because of the promise which has been put forward in this passage, that there should be at least one Brahmin Minister in the Ministry. I may point out that so far as the petitioner is a Patidar and it is in the context of this background that an appeal is made in the name of caste of the first respondent and the people are asked to vote for the first respondent because he was a Brahmin."

It seems to us that the High Court is correct in drawing the inference that Shambhu Maharaj was asking his voters to vote for the first respondent because he was a Brahmin."

105. In the case of "Babu Rao Patel V/s. The State (Delhi Administration)", reported in A.I.R. 1980 S. C. 763, the Supreme Court observed as follows :—

"Whether communalism is the weapon of an aggressive and militant minority as

suggested by the accused or the "shield of a nervous and fearful minority", the problem of communalism is not solved by castigating the members of the minority community as intolerant and blood thirsty and a community with a tradition of rape, loot, violence and murder. Whether the Moghuls were rapists and murderers or not and whether the Delhi roads should be named after them or not it was wrong to prevent the Moghuls as the ancestors of today's Muslims and to vilify the Muslims as the proud descendants of the 'foul' Moghuls. We are convinced that both the articles do promote feelings of enmity, hatred and ill-will between the Hindu and Muslim communities on grounds of community and this cannot be done on the guise political thesis or historical truth."

106. In the case of S. Harcharan Singh v/s. S. Sajjan Singh and others, AIR 1985 SC 236 the Supreme Court observed as under :—

"The paramount and basic purpose underlying Section 123 (3) of the Act is the concept of secular democracy. The inhibition of Section 12(3) should not be permitted to be circumvented indirectly or by circuitous or subtle devices. The court should attach importance to the effect and impact of the acts complained of and always keep in mind the paramount purpose of S.123(3) namely to prevent religious influence from entering the electoral field. The nature and consequence if an act may not appear on its very face but the same can be implied having regard to the language, the context, the status and position of the person issuing the statement, the appearance and known religion of the candidate, the class of persons to whom the statement or act is directed, etc.

It would not be an appeal to religion if a candidate is put up by saying "vote for him" because he is a good Sikh or he is a good Christian or he is a good Muslim, but it would be an appeal to religion if it is publicised that not to vote for him would be against Sikh religion or against Christian religion or against Hindu religion or to vote for the other candidate would be an act against a particular religion. It is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such

or not. In such case, therefore, the substance of the matter has to be judged."

107. In the case of Ziyauddin Burhanuddin Bukhari V/s. Brijmohan Ramdas Mehra and others reported in A.I.R. 1975 Supreme Court 1788, the Supreme Court observed, thus :

"The first of the speeches found to be objectionable was delivered by the appellant on 27-2-1972 at Masjid Street, within his own constituency. It is true that the contents of this speech are proved only by the evidence of Ansari corroborated by the notes prepared by Ansari himself. But, as these correspond with the contents of other speeches examined by us, there seems no reason to disbelieve Ansari when he says that the appellant told the audience that Muslim personal law was a matter of religious faith for Muslims and that it extended to the mode of disposing of bodies of the dead. The appellant went on to tell the listeners that, if they voted for Chagla, they would have to cremate the bodies of their dead instead of burying them because Chagla had cremated the dead body of his sister. The appellant also attacked Chagla's religion by stating that everyone had to observe his religion whole heartedly and not like one who was (to put it in the equivalent English idiom)" neither fish nor fowl". The appellant entreated his audience not to vote for those who stood against their religion. The clear implication of his words was that Chagla was not true to his religion whereas the appellant was, and, therefore, the voters should prefer Bukhari. His absolutely unambiguous object was to persuade the audience not to vote for Chagla but to vote for Bukhari on the ground that Bukhari was a true Muslim whereas Chagla was not.

The High Court had referred to *Kulrar Singh V/s. Mukhtiar Singh* (1964) 7 SCR 790-(AIR 1985 SC 141) and that a candidate appealing to voters in the name of his religion could be guilty of a corrupt practice struck by Section 123(3) of the Act if he accused a rival candidate, though of the same religious denomination, to be a renegade or a heretic. The appellant had made a direct attack of a personal character upon the compe-

tence of Chagla to represent Muslims because Chagla was not, according to Bukhari, a Muslim of the kind who could represent Muslims. Nothing could be a clearer denunciation of a rival on the ground of religion. In our opinion, the High Court had rightly held such accusations to be contraventions of 123(3) of the Act.

The second speech found to contain objectionable matter was proved to have been delivered by the appellant on 29-9-1972 at Hussainibagh, a place said to be so situated that, though it lies outside the Kumbharwada constituency, a meeting there would be attended largely by persons residing within the Kumbharwada constituency. Its contents were proved by a police Stenographer Sheikh, who had made a full shorthand record of it which was translated. In this speech, the appellant was shown to have stated that, although Muslim personal law may be considered a personal matter by Chagla it was considered to be "the law of God" by Muslims who would not tolerate any attempts to amend it as that would raise a religious question. In the course of this speech, the appellant is reported to have said that, if the Congress Government brought in "amendments in our religious law", the "battle would be found in every street", as "the question of religion has arisen". The appellant had threatened the ruling Congress party with open rebellion if attempts were made to change Muslim personal law which he called "a question of religion". The appellant had also made statements implying that Chagla was a supporter of this policy of change in what Bukhari called "a matter of religion" for Muslims. The High Court had held that these statements amounted to a violation of Section 123(3A) of the Act, on the ground that Bukhari's language was calculated to promote hostility between Hindus and Muslims. It opined that, in the appellant's mind, the Congress stood for the Hindu majority. We think that the language employed, viewed in the context of its purposes, could also fall within the purview of Section 123(3) of the Act inasmuch as Chagla was represented as candidate advocating what was contrary to Bukhari's

view of Muslim religion. Indeed, the words used by Bukhari could be said to have even graver implications. However, we think that it was sufficiently unrestrained and irresponsible so as to promote feelings of hostility between different classes of citizens of India on grounds of religion and also directed personally against Chagla, an alleged supporter of an assumed attack on Bukhari's religion. We do not find sufficient reason to differ from the view adopted by the High Court that these statements amounted to electoral offences struck by section 123(3A) of the Act."

108. In the case of *S. Harcharan Singh v. S. Sajjan Singh and others* (supra) reported in AIR 1985 S.C. 236 the Supreme Court observed as follows :—

"What are deemed to be corrupt practices are indicated in Section 123 of the Act. Sub-section (3) of the said section is as follows :—

"The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purpose of this clause.

It may be mentioned that before the amendment Act, 40 of 1961, effected on 12th September, 1964 sub-s (3) of Section 123 of the Act was as follows:—

"The systematic appeal by a candidate or his agent or by any other person to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem for the furtherance of the prospect of that candidate's elections'.

As a result of this amendment, inter alia, the expression "systematic" has been deleted and only "appeal" by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language continues to be corrupt practice. The statement of objects and reasons for introducing amendments in Ss. 123, 125, 139 and 141 of the Act in 1961 stated, inter alia, as follows:—

"For curbing communal and separatist tendencies in the country it is proposed to widen the scope of the corrupt practice mentioned in cl. (3) of S. 123 of the 1951 Act and to provide for a new corrupt practice (see sub-ss. (3) and (3A) of S. 123) and a new electoral offence for the promotion of feelings of hatred and enmity on grounds of religion, race, caste, community or language.

Therefore even a single appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste or community etc. would be corrupt practice."

109. I have scrutinised the evidence on record in the light of the above decisions. I find that the evidence on record is sufficient to arrive at a finding that the notices Sadhvi Reethambara and Shri Pramod Mahajan were the agents of the respondents. They gave their respective speeches by the consent of respondent. Whatever they spoke is binding upon the respondent. The respondent has not raised a note of demur. Both Sadhvi Reethambara and Shri Pramod Mahajan have solicited votes for the respondent in the name of Hindu religion which is the religion of the respondent. They have sought votes by creating enmity between Hindus and Muslims. This they have done while acting as the agents of the respondent. This has been done with the consent of the respondent. The respondent is therefore guilty under the provisions of Sec. 123(3) and Section 123(3A) of the Act. In the circumstances I hold that the election of the respondent is liable to be set aside on the ground of mal-practices committed by the noticed Sadhvi Reethambara and Shri Pramod Mahajan.

110. In the present case it has been contended on behalf of Shri Pramod Mahajan that he has a fundamental right under Article 19 (1) (a), 25, 29(1) of the Constitution of India to preserve and



propagate their religion which is the Hindu religion. According to him religion can become a subject matter of a political speech on an election platform. It is further contended that the provisions of Section 123(3) & 123(3A) of the Act in so far as they infringe or curtail his fundamental right is *ultra vires* and unconstitutional.

111. In a recent decision delivered by the Supreme Court in the case of "Subhash Desai v/s. Sharad J. Rao and others" in Civil Application No. 1745 of 1991, this is what the Supreme Court observed :

"Coming to merit, according to the appellant any call given to the voters to vote for a candidate, who serves the interest of the Hindus, cannot be held to be a corrupt practice. It was urged that if it is held to be corrupt practice within the meaning of Sub Sections (3) or 3 (A) of Section 123 of the Act, then those sub-sections have to be declared *ultra vires* Article 25 of the Constitution. According to the appellant, Article 25 of the Constitution, subject to public order, morality and health and other provisions of the said part of the Constitution, guarantees all persons right "freely to profess, practice and propagate religion". As such when a candidate at an election propagates his religion and ask the voters to profess and practice a particular religion, which may include Hinduism, that right cannot be restricted by any Act or statute. If the framers of the constitution, have guaranteed that right to every citizen of this country, then any person who is a candidate at any election, can also propagate his religion and ask the voters to do or not to do an act, which may be in the interest of such religion, including not to vote a person, whose election will prejudicially affect the propagation of the religion in question."

When the framers of the Constitution guaranteed every citizen, right to freely profess, practise and propagate his religion, that right does not extend to creating hatred amongst two groups of persons, practising different religions. Sub-section (3) and sub-section (3A) of section 123, never purport to curb the right guaranteed by Article 25 of the Constitution. They only purport to curb the appeal on the ground of religion or propagating religion for creating, feeling of enmity or hatred between different classes of citizens of India during the election campaign by the candidate or his agent or any person with his consent for furtherance of the prospects of the election of that candidate or for prejudicially

affecting the election of any other candidate. Sub-sections (3) and (3A) of Section 123, in no way are in conflict with Article 25 of the Constitution—both can co-exist Article 25 enables every citizen of India, to profess, practice and propagate his religion, whereas sub-sections (3) and (3A) of Section 123 purport to ensure that the election is not influenced by considerations for religion, race, caste, community or language. Sub-sections (3) and (3A) of Section 123 merely prescribe the conditions, which must be observed, if a candidate wants to enter in Parliament or Legislative Assembly. The right to stand for an election is a special right created by a statute and can be exercised on the conditions laid down by the said statute. Keeping in view that the election should not be contested on the ground of religion, race, caste, community, or language and result of an election is not affected by promoting feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community, or language; the framers of the Act, have declared appeal on ground of religion, race, caste, community or language and propagating religion, race, caste, community or language for creating feeling of enmity or hatred between different classes of citizens as corrupt practices, which shall vitiate the election.

On behalf of the appellant, reference was made to the case of Jagdev Singh Sidhani v/s. Pratap Singh Daulta, 1964 (6) SCR 750, where this Court had to consider whether an appeal made to the electorate to vote for a particular candidate on ground of his language, was covered by Section 123(3). It was said that the expression "on the ground of his language" must be read in the light of the fundamental right which is guaranteed by Article 29(1) of the Constitution. It was pointed out that the said expression cannot be read as trespassing upon the fundamental right guaranteed by Article 29(1); political agitation for conservation of the language of a section of the citizens cannot therefore be regarded as a corrupt practice within the meaning of Section 123(3) of the Act. But at the same time it was said :—

"The corrupt practice defined by cl. (3) of s.123 is committed when an appeal is made either to vote or refrain from voting on the ground of a candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of section 100 read with section 123(3). Therefore, it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed. Where, however, for conservation

of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, it will not amount to a corrupt practice."

In the case of *Jumana Prasad Mukhariya v/s. Lachhi Ram* 1955 (1) SCR 608, Section 123(5) and 124(5) of the Act, as they then stood, were challenged, as infringing the fundamental right of freedom of expression under Article 19(1) of the Constitution. This Court rejected the contention, saying that the provisions of the Act do not stop a man from speaking; they merely prescribe conditions which have to be observed or being elected.

112. It would, thus, appear that Articles 19, 25 and 29 of the Constitution of India confers a right to freely profess, practise and propagate religion. The said right, however, cannot be exercised on an election platform if it infringes any of the provisions contained in the election laws. If a person desires to contest elections and be a member of the Parliament or State Legislature, he has to abide by the rules of the game which are provided in the election laws. If he infringes the election laws he will be disqualified to be a member of the Parliament or State Legislature. It is always open to a candidate to hold out electoral promises to confer benefits to a particular religion or community. He can extend a promise that if elected to power he will construct temples, mosques or churches, as the case may be. However, he cannot use religion or caste for the purpose of seeking votes in the name of religion or for the purpose of dividing the sections of the people on the ground of religion. If he does so, he would be guilty of electoral mal-practices and will be disqualified. This, to my mind, is the law laid down by the Supreme Court in the aforesaid case and other cases which have been cited before me.

113. In view of the above decisions, I am constrained to hold that though Shri Mahajan may have a fundamental right of freedom of speech and expression as enshrined under Article 19(1) (a), though he may have right freely to profess, practise and propagate religion as enshrined under Article 25(1) the said right cannot be exercised on an election platform. As far as the election platform is concerned, the parties are governed by the provisions of the Act. Those who desire to enter the Parliament or the Legislative Assembly, are expressed to abide by the mandate contained in the Act which alone confers a right to contest elections and enter the legislative assembly and the Parliament. Any infraction of the provisions of the Act which confers right to contest the elections will disqualify

the candidate from entering the Parliament or the Legislative Assembly.

114. Once it is found that the noticee Shri Mahajan has no fundamental right under Article 19(1) and 25 on an election platform, to seek votes in the name of Hindu religion, it follows that he has violated the provisions of Sections 123(3) and (3A) of the Act. In the instant case Shri Mahajan is the All India Party Secretary. The Respondent has been given party ticket by the party. Form 'A' and 'B' which are parts of Exhibit-H have been countersigned by Shri Mahajan. The Respondent was admittedly present at the time of the meeting. He has not disassociated himself from any part of the speech delivered by Shri Mahajan. According to the Respondent the speech delivered by Shri Mahajan is binding upon him and acceptable to him. Similar is the version of Shri Mahajan. Hence the appeal contained in the speech of Shri Mahajan would be an appeal by an Agent of the Respondent or by any other person with the consent of the respondent to vote for the respondent on the respondent's religion and it will fall within the mischief of section 123(3A) of the Act. Issue Nos. 10, 11, 13, 14 and 17 are answered accordingly.

115. In the result, I find that as far as the speech of Sadhvi Reethambara delivered on 21st May, 1991 at Shivaji Maidan, Thane is concerned, it is a speech delivered by her on an election platform. In the speech she has sought for votes in the name of Hindu religion, which is the religion of the respondent. I hold that the respondent was present at the time of the meeting. He has consented to that speech being given. Sadhvi Reethambara has with his consent asked for votes for him in the name of Hindu Religion, which is the religion of the respondent. The respondent as also Sadhvi Reethambara are, therefore, guilty of electoral mal-practices contemplated under sections 123(3) & 123(3A) of the Act. The election of the respondent is, therefore, liable to be set aside and Sadhvi Reethambara is liable to be named as collaborator in the aforesaid electoral mal-practices.

116. I further find that Shri Pramod Mahajan who is All India Secretary of the BJP has in his speech given on 11th June, 1991 at Kalyan Chowk, Kalyan (W) asked for votes in favour of the respondent in the name of Hindu Religion, which is the religion of the respondent, and this falls within the mischief of section 123(3) of the Act. I further find that he has promoted or attempted to promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion and this falls within the mis-

chief of Section 123(3A) of the Act. This he has done by his being an Agent of the Respondent. This he has done with the consent of the respondent.

117. I further find on the evidence of Shri Pramod Mahajan himself that the election manifesto of the BJP which are at Exhibits 3 and L, on his own showing tends to create enmity between Hindus and Muslims, and this falls within the mischief of the provisions of section 123(3A) of the Act. Hence the election of the respondent is liable to be set aside and Shri Pramod Mahajan is liable to be named as a collaborator in the aforesaid electoral mal-practices.

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118. In the result, the petition succeeds. The petition is made absolute in terms of prayer clauses (a) and (b) and it is hereby declared that the election of the respondent Prof. Ram Kapse to the 10th Parliament (Lok Sabha) from the Thane Parliamentary Constituency held on 15th June, 1991 is null and void on the ground of the Respondent's agents and other persons with his consent having committed corrupt practices, as defined under Section 123(3) and 123(3A) of the Representation of the People Act, 1951. I direct that fresh elections be held in the said 10th Thane Parliamentary Constituency. The noticees Sadhvi Reethambara and Shri Pramod Mahajan are named under Section 99 of the Act as being collaborators corrupt electoral mal-practice.

The respondent shall pay the costs of the petitioner as per Rules.

119. The office to communicate the operative part of this order to the Election Commission, Speaker of the Lok Sabha and Chairman of the Rajya Sabha and thereafter send an authenticated copy of this judgment to the Election Commission.

120. At this stage an application is submitted on behalf of the respondent for stay of the operation of my order on the ground that he intends to prefer an appeal. The petitioner has opposed the prayer by filing an affidavit in reply. Section 116-B enables the High Court on sufficient cause being shown to grant stay of the operation of the order. In the application apart from stating that the respondent intends to prefer an appeal no other cause is shown much less sufficient cause. In the instant case, the respondent as also both the noticees have admitted that appeals were made by them in the name of Hindu religion which is the religion of the respondent. It is also admitted by all the three that appeals for votes were made in the name of Ram Janmabhoomi—Babri Masjid. The said issue was raised as per the manifesto of the BJP. The said manifesto recites that after partition Hindus and Muslims who are blood brothers have not even remained friends. The issue of Ramjanmabhoomi was raised in this context. Both the respondent and Pramod Mahajan have admitted that what is stated in the Manifesto is improper. In view of these peculiar findings, the prayer for stay is rejected.

